

- Owners of properties for rent: houses, lands, means of transportation, machines, equipment and others.
 - Households and individuals engaging in agricultural production with big size and deriving high income. According to the regulations of Government, the cases having two conditions sufficiently: commodity value of over 90,000,000VND per year and income of over 36,000,000VND per year, are subject to the corporation tax with respect to income surplus of 36,000,000VND.
- 3) Permanent establishment of a foreign company in Viet Nam: the criteria determining permanent establishment is stipulated certainly in Law and other documents conducting implementation according with the international routine.
 - 4) The foreign individuals doing business in Viet Nam or deriving income arising in Viet Nam such as owners of properties for rent, capital lending, technological transfer, joint stock, buying share and bond...

Like that, excluding taxpayers that were subject to the profit tax and are subject to the corporation tax now, the Law on Corporation Tax has supplemented more taxpayers including: independent professionals; owners of properties for rent; households and individuals engaging in agricultural production with big size and deriving high income; the foreign individuals doing business in Viet Nam or deriving income arising in Viet Nam. This law has also provided more clearly the criteria determining the permanent establishment of a foreign company in Viet Nam...

According to statistical data, the corporation tax registered payers were provided the registered tax codes in 1999 including 5,050 of the state-owned enterprises; 2,416 of the foreign investment enterprises; 7,200 of the economic entities established by the army forces and unions; 36,680 of the limited companies, the joint-stock companies and the private enterprises; 16,000 of the cooperatives and 1,024,500 of business households.

- (2) Taxable income: includes the income derived from production of and trade in goods and services from both domestic and foreign sources, and other incomes in a financial year.

Taxable income from production of and trade in goods and services shall be determined by the revenue minus the cost to get the real income. Basically, both of revenue and taxable cost are determined according to the principle of "arising" or "cash" in the special cases regulated by the Government and conducted by the Ministry of Finance.

Other taxable income shall include capital gains on securities, gains from ownership of or right to use property (include intellectual ownership also), capital gains from selling or transferring assets, transferring the asset and real-estate leasing right, interest, gains from selling foreign currencies; balance of reserves;

payment of bad debts; due debts without debtors' identification; hidden business income of previous years and currently realized, and other incomes.

With respect to income derived from production of and trade in goods and services from foreign sources is implemented according to the agreements on avoidance of double taxation even as for business units in countries which has not signed those agreements yet, as follows: declaration of income before paying tax in order to be imposed tax following the tax tariff of Viet Nam. After that, abstracting tax paid abroad as paying in Viet Nam. However maximum abstracting is not over the tax payment calculating according to the tariff of Viet Nam per the foreign income.

Taxable revenue: In the condition of applying two value added tax calculation methods and two kinds of selling bills, regulation of taxable revenue is discriminated by two particular cases:

- With respect to the case of the value added tax payment subject to credit method, the taxable revenue is total revenue derived from sales of goods, supplying services with non-VAT price.
- With respect to the case of the value added tax payment subject to direct method, the taxable revenue is total revenue derived in bills.

The Government assigns to the Ministry of Finance to conduct the particular cases on the taxable revenue in accordance with each activity.

In case of revenue in foreign currencies, it shall be converted into Vietnamese currency (dong) at the official exchange rate announced by the Bank Union of Viet Nam at the time of payment.

For the purposes of the corporation tax computation, reasonable deductible expenses shall include:

1. Depreciation cost of fixed assets used for production of and trade in goods and services.
2. Costs of materials, fuel, energy, goods actually used for production of and trade in goods and services relating to the real revenue and taxable income of a given tax period and determined basing on relevant depletion rate and actual input value.
3. Salaries, wages, payments for meals, and other payments as provided by the current regulations, except wages and salaries paid to owners of private enterprises, owners of household businesses engaging in production of and trade in goods and services, income of founders who has not managed the corporation by themselves.
4. Expenses paid for scientific research and technology (R&D), know-how, disable people; contributions for education; health care; training of staffs ...depending on capability of enterprises, but it must have legal vouchers.
5. Expenses for such services as electricity, water, telephone; repair of fixed assets; rental of fixed assets; auditing; premiums of property insurance; royalties paid for rights to use technical documents, patents, technology licenses other than fixed assets; technical services;
6. Expenses for female labor as provided by Law; labor security; safe guard; contributions to social security and health insurance funds which are under the responsibility of employers;

contributions to labor union; overhead management expenses as provided by the current regulations;

7. Expenses for actual interest paid to banks, credit organizations and other creditors on loans borrowed for business activities, but not exceeding the ceiling interest rate set by the State Bank of Viet Nam for credit organizations;
8. Expenses for provisional funds as provided by Law;
9. Expenses for retirement allowances to employees;
10. Expenses for carrying out supply of goods and services;
11. Expenses for advertising, marketing, promotion directly relating to production of and trade in goods and services and other expenses to the extent not exceeding 5% of total expenses of the taxpayer (except newly established enterprises in the first two years, this rate is 7%).
12. Taxes, fees, charges, land rental relating to production of and trade in goods and services (excluding the corporation tax);
13. Management costs allocated by foreign companies to their permanent establishments in Viet Nam (overhead expenses) as stipulated by the Government.

The following expenses shall not be entitled as deductible:

- Expenses not actually incurred;
- Expenses with no spending documents or with illegal ones;
- Fines, penalties or expenses not relating to taxable revenue and taxable income;
- Expenses incurred by others.

(3) The tax rate:

The Law has provided the general tax rates applying uniformly to the enterprises in all industries and fields instead of the former discriminated tax rate regime. Moreover, in accordance with the Law on Domestic Investment Encouragement and Foreign Investment in Viet Nam, the Law on Corporation Tax has had the preferential tax rates combining with the investment encouragement conditions with respect to some fields and areas.

- 1) With respect to domestic business entities and foreign organizations and individuals doing business in Viet Nam not subject to the Law on Foreign Investment in Viet Nam applying the following tax rates:

- The general tax rate of 32%.

In case of making losses due to the corporation tax rate of 32%, business entities engaging in production, construction, transportation currently subject to the profits tax rate of 25% shall continue to enjoy the rate of 25% for a period of 3 years from the day this law coming into force; Upon expiry of 3 year period, the tax rate of 32% shall apply. This is temporary means to help these entities

adapting a new mechanism.

New investment projects in fields and areas included in the list of invested encouragement projects shall enjoy preferential tax rates of 25%, 20%, 15% as stipulated by the Government.

In addition to the rate of 32%, business entities deriving high income thanks to preferential business conditions shall be subject to additional corporation tax at the rate of 25% applied to the portion of high income created by the preferential conditions.

- 2) The corporation tax rates applied to foreign invested enterprises and foreign parties of partnerships shall be basically 25% and apply the preferential tax rates of 25%, 20%, 15% in duration from 10 years to 15 years depending on each project's conditions. The preferential tax rates and duration, with other preferential conditions will be mentioned directly in the license of investment. Especially, the investment projects of BOT, BTO, BT, export processing zone... is applied the preferential tax rates of 25%, 20%, 15% in whole time of project implement.
- 3) The corporation tax rate applied to domestic and foreign business entities engaging in exploration, exploitation of oil, gas is 50%; for those engaging in exploitation of other rare and precious natural resources the rates may vary from 33% to 50% depending on each particular project and enterprise.
- 4) Foreign investors shall be subject to a withholding tax on their income when repatriated abroad at the tax rates of 5%, 7% and 10% (3%, 5% and 7% were applied from 2000 on) depending on each particular project and mentioning directly in the license of investment.

(4) Tax exemption, reduction and refund

1) Tax exemption and reduction

Besides applying the preferential tax policies through the above low tax rates, the Law on Corporation Tax has also provided the cases of tax exemption and reduction to encourage investment, applying high techniques, using labor...and contributing on solving some social problems, as followings:

- Tax exemption and reduction granted to newly established enterprises;
- Tax exemption and reduction for domestic enterprises having invested, in assembling the new production lines, expanding the production size, improving the production capacity, renewing technology, improving environmental conditions, strengthening production capacity;
- Tax exemption and reduction granted to business entities moving to mountainous and remote areas, islands and other areas with difficulties;
- Tax exemption for the following income:
 - + Income derived from contracts on scientific research;
 - + Income derived from contracts on provision of scientific and technical services to agricultural production;
 - + Income of business entities whose labors are only disable people;

- + Income from training services to disable people, ethnic minorities, disadvantaged children, people suffering from social evils;
- + Low income business households as stipulated by the Government.
- Tax reduction shall be granted to domestic and foreign invested enterprises of manufacture, construction, transportation with high proportion of female employment as provided by the Government;
- 20% income tax reduction shall be granted to Vietnamese emigrants investing in Viet Nam in accordance with the Law on Foreign Investment in Viet Nam, except for the investors subject to the 10% income tax rate; the lowest withholding tax rate shall apply to their repatriated income;

2) **Tax refund:** Tax refund on income from reinvestment by foreign invested enterprises and foreign parties in partnership in case of using their divided income to reinvest in encouragible investment projects shall enjoy partial or entire refund of the tax paid on reinvested income. The limits of tax refund on reinvested income shall be defined by the Government for different areas, types, industries and length of reinvestment.

(5) **Loss carried over:** Domestic business entities and joint ventures incurring losses after final settlement of tax liability with the tax authorities in charge shall be entitled to carry the losses forward and deduct against their taxable income of the following years. The time limit for loss carry-forward shall not exceed 5 years.

(6) **Some problems arising after one-year implementation of the Law on the Corporation Tax:**

As compared to the value-added tax, the implementation of the corporation tax has taken more advantages. The most important reason is the corporation tax has had some regulations better than the former profit tax such as low tax rates, small difference between domestic and foreign investment, more preferential cases and more simply procedures of declaration and tax payment. However, in the process of implementation, there are some difficulties as following:

1) **Taxpayer:**

- In fact, there are some criticisms on regulation of households and individuals engaging in agricultural production of big size and deriving high income are subject to the corporation tax with respect to income surplus of 36,000,000VND. However, according to survey data of the Vietnamese farmers association and local tax offices, in Viet Nam there are only 13,700 households (0.12% of totally 11,000,000 households engaging in agricultural production) engaging in agricultural production of big size and deriving high income are subject to the corporation tax. Therefore that reasonable regulation can be accepted.

- Otherwise, there are some criticisms that income is subject to the corporation tax with respect to income surplus of 36,000,000VND, which is low. Hence, applying tax rate of 32% is high. The state currently is encouraging farm economy development so that tax imposed households engaging in agricultural production of big size to be not sensible due to decline a will of excellent producer.
- 2) Discrimination of taxable income and revenue with respect to revenue in advance of customers: In fact, infrastructure construction business entities in the industrial and export processing zones usually request investors to pay property infrastructure rental for as many years as investors can. However, the Government provided to calculate total revenue in advance to taxable revenue in year arising revenue and contributed in advance expenses arising anticipatively to legal expenses. That is why enterprises complained that the Government occupied enterprises' capital and prevented the investment and capital mobilizing activities...
 - 3) Tax rate: The former profit tax had three tax rates: 25%, 35% and 45%. Currently, the corporation tax has general tax rate of 32%. In case of making losses due to the corporation tax rate of 32%, business entities engaging in production, construction, transportation currently subject to the profits tax rate of 25% shall continue to enjoy the rate of 25% for a period of 3 years from the day this law comes into force; Upon expiry of 3 year period, the tax rate of 32% shall apply. However, business entities engaging in trade, service and tourism suggest also to apply tax rate of 25% for a period of 3 years (the former profit tax of 45%). This is non-sense claim.
 - 4) Additional corporation tax: In addition to the rate of 32%, business entities deriving high income thanks to preferential business conditions shall be subject to additional corporation tax at the rate of 25% applied to the portion of high income created by the preferential conditions. However, some enterprises complain about unclear criteria of determination of "high income thanks to preferential business conditions" and criteria of "12% of owned capital" due to enterprises' capital are so different.
 - 5) Some domestic enterprises asked to accept expenses for gifts, charity and friendly house as legal expenses in order to be fair with the foreign investment enterprises.
 - 6) Some enterprises complained about discrimination between the domestic and foreign investment enterprises on preferential tax rate, tax reduction and exemption. On the contrary, some criticized to treat discrimination with respect to foreign investors such as higher price of service and land rental... than domestic investors.
 - 7) Some criticized that the regulations of preferential tax and procedure are different between the Law on Domestic Investment Encouragement, Law on Foreign Investment in Viet Nam, the Law on Corporation Tax. On the contrary, some enterprises criticized that applying preferential tax for investors that made more complicated the Law on Tax and also not affecting due to lack of unification among the documents providing the Law implement.

(7) The orientations of amendment, supplement and completion:

- 1) In short-term, the most important point needs to be amended, which is households and individuals engaging in agricultural production of big size and deriving high income are subject to the corporation tax. In fact, the Government supplied amendment and supplement of the Decree 30/1998/ND-CP related to that point and currently the Ministry of Finance is submitting a draft in order to be examined by functional office. The contents of amendment are following:
 - Criteria given to determine households engaging in good production deriving high income of over 50,000,000VND per year and good value of over 150,000,000VND per year.
 - Tax rate: Due to understanding of agriculture is invested encouragement field and countryside is invested encouragement area so that applying the lowest preferential tax rate as followed the Law on Domestic Investment Encouragement and the Law on Corporation Tax.
 - Applying the policy of tax exemption of 2 or 3 years and tax reduction of 50% for next 2 years likes the policy applying for newly establish enterprises.
- 2) Criteria determining business entities deriving high income thanks to preferential business conditions shall be subject to additional corporation tax, which is researching in order to help enterprises having satisfactory income after tax to increase invested capital, to expand size, to renovate technology and to improve productive capacity.
- 3) Accompanying the encouraging implement of socialization activities in culture, health care, education and sport..., the determination of expenses for those activities being legal expenses will be amended and supplemented to accord with reality. Accepting these expenses needs to base on basic principle such as real and reasonable expenses, real receiving objects, provable documents...
- 4) In long-term, discriminating between the domestic and foreign investors will be treated in the program of compiling the Law on Corporation Income Tax and Individual Income Tax. However, from now to the end of 2005 we still need small discrimination between the domestic and foreign investment enterprises in order to absorb foreign investment.

Furthermore, from now to 2005, amending regulations land rental, price of service in order to have the uniform price to both of the domestic and foreign investors as soon. However, regulations for reducing the withholding tax, applying such fees uniformly for domestic and foreign investors and amending the income tax on high income earner with respect to foreign individuals (with respect to Vietnamese individuals will be amended as soon) were applied.

- 5) From 2006 on, when Viet Nam will integrate actually into regional economy, there will not have discrimination between the domestic and foreign investors, tax rate will be applied uniformly of 25% or 30%, tax exemption and reduction will be instead of new one for invested encouragement to researching, applying high technology, the withholding tax will be instead of tax on dividend, and some individual income paid from enterprise will be re-arranged in order to cover almost revenue and

avoidance of double taxation on income.

The income tax on high income earner

The Ordinance on Income Tax on High-Income Earner was passed by the State Council (is the Standing Committee of the National Assembly now) on 27th December 1990 and took effect from 1st April 1991. Until now, the Ordinance has been supplemented and amended several times in 1992, 1994, 1997 and 1999. Although this kind of tax is new in Viet Nam, it is getting the important position in the current tax system during the implementation. It is not only the one to contribute for the state budget, but to be the important instrument in order to adjust income of a part of high-income earners in the process of shifting to the market economy.

The taxpayers were initially about 200,000 persons (almost include foreigners, Vietnamese labors working for the foreign-capital enterprises, people receiving gifts from the relatives residing overseas and some having lottery winning. However, the taxpayers are nearly 1,000,000 persons now.

Although the tax threshold was adjusted to increase gradually adapting with the living standard in order to guarantee for taxpayers with the satisfactory income but the annual revenue to the state budget from this tax still increases. At the beginning, income tax on high-income earner contributed a small percent in total revenue to the state budget (about 0,7%) but it has been contributing over 2% of total revenue to the state budget at the end of the 1990s (see appendix). Hence, the revenue to the state budget from this tax, is nearly equal to the revenue from tax on agricultural land use of over 10 million farmers in 1998, 1999 and 2000, and it is possible to go up in the coming time.

The main contents of the income tax on high-income earner and some problems arising in the process of implementation and the trend to reform this tax, are followings:

2. The main contents of the income tax on high-income earner

- (1) Taxable Cover: the income tax on high-income earner applies for the individuals who have their income higher than the average one basing on residency and sources where income arises.
- (2) Taxpayers: are all Vietnamese citizens and foreigners who have income arising in Viet Nam.

The foreigners are defined by resident and non-resident people: foreigners are considered resident in Viet Nam for tax purposes if they stay from 183 days or more in Viet Nam within 12 months starting from the date of their first arrival for. And foreigners are considered non-resident in Viet Nam for tax purposes if they stay in Viet Nam less than 183 days.

Resident-foreigners are imposed basing on the global income and non-resident foreigners are imposed basing on the income arising in Viet Nam. Also foreigners, who earn income arising in Viet Nam from technology transfer, royalties, are subject to this tax according to the regulation of this Ordinance even if

they are not present in Viet Nam.

Vietnamese citizens are imposed basing on the global income. However, the income earning in time of working overseas is imposed lower as it is applied according to the partially progressive tariff for regular income like the resident-foreigners.

(3) Taxable income: is divided into two types: regular income and irregular income.

1) **Regular income**: is aggregate amount of income arising steadily and regularly for year including:

In form of salaries, wages, remuneration including overtime, third-shift and thirteenth salaries (if have), allowances instead of sum of money received from the social insurance fund; money for lunch and mid-shift.

In form of monthly, quarterly and yearly bonuses and cash bonuses arising on occasion of holidays and festival...in kind from various sources;

In form of income received from participation in business associations, Boards of management, Boards of administration and Boards of enterprises;

In form of fixed personal income received from participation in business, production or service activities, which are not subject to corporation tax. For instance, the individuals run their businesses independently in the field of design, architecture, consultative services on the basis of long-term contracts, teaching, coaching, training, cultural and artistic performances.

In form of benefit getting from employers such as non-payment shelter or persons, who share the same office, are supplied electric and water without payment.

2) **Irregular taxable income**: is aggregate amount of income arising immediately, timely and irregularly for month including:

Income in the form of gifts or presents in kind which are sent by foreign organizations or individuals to Viet Nam by all means: transferring through income payers as post-offices and bringing to Viet Nam by others. Recipients are Vietnamese citizens, foreigners, the owner or the representatives of the private enterprises. In case of one's property brought to Viet Nam that were filled in declaration forms when they did customs procedures, are not subject to taxable income in the form of gifts or presents.

Income from transfer of technology a contract by contract basis, include:

- + Transfer the ownership of or rights to use industrial property such as invention, industrial design, useful method, goods brand; trade mark...
- + Transfer carried out by way of sale or supply (if have or not equipment) technical know-how, technical plans, technological process, designs or sample of design, formulation, maps, tables, technical figure or other technical knowledge.

Implementation of the following technical support and consultative services:

- + Researching, analyzing and accessing pre-flexible and flexible investment and technology

innovation projects.

- + Technical support, technological selection, equipment assembling instructions, pilot running of technological line.
- + Consultation for technological management, organization and operation of technology and production process.
- + Teaching, training, improving technical profession and management of officers, technicians and workers (not including kinds of professional training)
- + Implementing services on income, information settlement and supply of market, technology, law, natural resources and environment.

Transfer of usage or rights to use industrial, commercial or scientific equipment (not including pure activities as importing machines, equipments and materials...)

If gifts and presents are considered technological transfer of industrial ownership regulated at 2.2.2. Item, recipients are not subject to irregular taxable income.

- + Income in the form of royalties from literary or artistic works
- + Income in respect of technical construction designs, technical industrial designs and other services: consultation, training, intermediary services, income from bonuses, discount and commission...
- + Income in the form of scientific activities such as: seminar, scientific research thesis in all levels.
- + Income in the forms of state lottery winning and others for incentives.

According to the current Government regulations, income in the form of interest received from bank deposits and bank savings, T-bills, ordinary bonds, government bonds and shares are temporarily exempt from the income tax.

(4) Non-taxable income includes the following:

- Allowances for nightshift work (excluding wages for third shift);
- Allowances for toxic and dangerous trades or for work in regions, which have dangerous and toxic conditions.
- Regional, incentive and special allowances for remote areas, bad weather, new economic zones, offshore islands, bad condition frontier areas but not including allowances for foreigners away from the country;
- Seniority allowances for security forces;
- Special allowances for certain industry and trades: forensic medicine and surgery;
- Allowances for civil servants and others got from the state budget, favorable allowances for revolutionary militarant before 1945;

- Allowances for business trips, payments for transportation means, accommodation expenses, living expense;
- Fixed meal allowances for certain special industries and trade, on-site meals (excluding cases where it is paid in cash);
- Social allowances for people who get the social policies such as: invalids, sick soldiers, revolutionary martyr family, people devoting to revolutions; allowances for urgent bad conditions and for solving social evil;
- Allowances for unemployment, dismissal from work in accordance with the regulations of the Labor Law;
- Allowances for relocation of production establishments pursuant to state regulations, including relocation one time of foreigner residing in Viet Nam;
- Insurance compensation payments for personal and property insurance policies;
- Remuneration for technical innovation and invention, international rewards, national rewards are organized and approved by the Vietnamese State (excluding remuneration is sponsored by other individuals or organizations);
- Remuneration accompanied with honor titles is given by the State such as the Vietnamese mother hero, the people's security force hero, the labor hero, the professor, the people's teacher, the excellent teacher, the people's artist, the excellent artist...
- Income in form of salaries and wages of owners of business households and private enterprises is imposed the corporation tax (this income is not calculated as costs when determining taxable income of business units).
- Regular income by foreigner who stay in Viet Nam not exceeding 30 days within a continuous period of 12 months.

(5) The income tax tariff:

To differ from income tax in other countries, the income tax on high-income earner in Viet Nam is not mixed tax. In fact, it imposes the certain income depending on arising sources and the income substance. Regular income tax tariff has the distinction between the Vietnamese and the foreigners. However, in respect of irregular income, the Vietnamese and the foreigners are subject to the same tariff as bellows:

As for the Vietnamese residing in the country, the current partially progressive tariff includes 7 levels with the lowest tax rate of 0%, the highest tax rate of 60% and tax threshold of 2,000,000 per month (before May, 1994, it includes 8 levels with the maximum tax rate of 80% imposing on monthly income of over 6,300,000 VND). Moreover, as for citizens, who have remaining income after paying income tax of over 8,000,000 per month, will have to pay surcharge tax of 30% to the income exceeding 8,000,000 VND.

As for the foreigners residing in Viet Nam and Vietnamese citizens working abroad, the partially progressive tariff of regular income includes 6 levels with the lowest tax rate of 0%, the highest tax rate of 50% and tax threshold of 8,000,000 per month. Non-resident foreigners are imposed the unified tax rate of 10% of total income.

The partially progressive tariff for irregular income is stipulated for all citizens according to timely income. It includes 6 tax rate levels with the highest tax rate of 30% and tax threshold of 2,000,000 per month. Besides, some kinds of income are imposed the fixed tax rate on the general income:

- + Income derived from a lottery winning in a sum higher than 12,500,000 will be subject to a unified fixed rate of 10%.
- + Income derived from the transfer of technology on a sum higher than 2,000,000 will be subject to a unified fixed rate of 5%.
- + Money or other items sent by overseas residents in a sum higher than 2,000,000 will be subject to a unified fixed rate of 5%.

(6) Income tax calculation method:

In respect of regular income, Ordinance has stipulated definitely for taxpayers:

- As for the Vietnamese working in the country or overseas and the foreigners residing in Viet Nam: total income per year (including income sources from abroad) divides 12 months (calculated by calendar year) to get average monthly income, then the correlative tax tariff will be applied.
- As for the foreigners residing in Viet Nam over 183 days: total income arising per year (including both income arising in Viet Nam and other countries) divides 12 months, then tax tariff will be applied for one month and whole year.
- As for the foreigners residing in Viet Nam from 30 days to 182 days: taxable income is total arising in Viet Nam in that period.

In respect of irregular income, it is calculated on personal income for each earning or each period according to the above-mentioned tax tariff. Income received in kind of gifts and presents from the foreign countries will be calculated by each period. Income getting from transfer of technology, technical construction designs and technical industrial designs will be calculated by each contract value not depending on payment times.

(7) Organization of tax collection, payment and settlement:

Income tax is applied subject to withhold at source. Income payers or individuals or labor management offices (called the delegated organizations) will have the obligation to withhold the income tax to state budget before paying personal income. In other cases, direct collection will be implemented.

Taxpayers (both regular and irregular income) have the responsibilities actively to register, declare

their income for the delegated organizations or local tax offices. The delegated organizations will have to register tax collection with the local tax offices. Moreover, taxpayers not withholding are obliged to register the local tax offices to get the tax register and personal income declaration.

In respect of regular income: income payers actively withhold the tax at source and pay it to the state budget every month. At the end of the year or after the expiry of employment contract, any individual is responsible for summing up all income sources to send to the delegated organizations. The delegated organizations will have to implement the tax settlement not later than February 28th, next year.

In cases of individuals working in different places in a year, their income tax will be withheld at source, then he/she has to declare and settle at the last working place.

In cases of individuals working in and getting income from a various places in the same year, he/she has to sum up, declare and settle income tax where he/she has highest income or is favorable place.

In respect of irregular income: irregular income tax payment is made on a case by case basis. Income payers are responsible for providing tax return forms to tax payers for declaration as well as for tax computation and for withholding the tax at source before paying income to tax payers. The settlement between taxpayers and income payers is implemented on the declaration forms.

(8) Exemption, reduction of income tax:

Ordinance on income tax of high income earners has stipulated that where there is a natural disaster enemy-inflicts destruction, accident affecting the life of the tax payers and other cases regulated by the Government, the tax payers will get the reduction or exemption of the payable income tax.

3. Some problems arising in the process of implementation and the trend to reform income tax.

During the implementation, there are different ideas about income tax on high-income earners from the issuance date and even after the amended and supplemented process, it has reaction of taxpayers and public opinion relating to the following contents:

(1) Tax payers: the current Ordinance has mainly limited income sources from salaries, wages and other sources from gifts, presents, lottery winning and transfer of technology... so the tax payers only are included the foreigners and a part of the Vietnamese who have high income.

(2) There are different ideas about the equivalent between the income tax and other kinds of tax, giving examples:

One million people, especially farmers are said that income tax on high-income earners is actually not fair. The basis of this idea is the comparison among the tax of agricultural land use, corporation tax and this tax. A farmer with 1 hecta of first level, who has income of 3,200,000 per year, has to pay the

agricultural land use tax of 550 kg rice equal to 880000 VND or income's 27.5%. Also a household has the average income of 1,000,000 per month to pay corporation tax of 32% and total tax payment of 3,840,000 VND per year. While, a citizen has the average income of 2,000,000 per month equal to 7.5 times of a farmer's income or 2 times of the household's income but that citizen is not imposed the income tax.

Moreover, applying two discriminated tax tariffs between the Vietnamese and foreigners has created the big difference for tax paying obligation. For instance, as for the same income of 20,000,000VND per month, the Vietnamese will pay 9,600,000VND corresponding to total income's 48%, while the foreigners will only pay 1,200,000VND corresponding to total income's 6%.

- (3) Taxable threshold: the Ordinance has regulated the taxable threshold which is convenient and simple for tax calculation, collection and payment but it is not actually fair because the individuals with different lives, who have the same income, need to have different tax obligations. For example, a single person has more advantages than another person who has to bring up wife (or husband), father, mother, and children...
- (4) In some cases, discriminating regular and irregular income is unfair because hermaphrodite cases could be one of two kinds of income. For example, an architect does business independently in year in design only, and have two contracts: one of 20,000,000VND and another of 16,000,000VND. If we suppose, it is irregular income, it is imposed of 3,800,000VND of income tax. Otherwise, if we suppose, it is regular income, it is imposed of 1,200,000 VND only.
- (5) Tariff: The tax rate in the partially progressive tariff in Viet Nam (the highest tax rate of 60%) is higher than the tax rate in other countries in South East Asia (the highest tax rate of 30%). Hence, applying the two discriminated tariffs between Vietnamese and foreigner is unfair to regulate income. By the way, in each tariff, small difference levels of taxable income do increase highly of mobilizing speed among levels of taxable income. Moreover, mobilizing speed of Vietnamese is much faster than foreigner. For example, the highest tax threshold in the partially progressive tariff as for Vietnamese, is over 10,000,000VND (tax rate of 60%), is five times of the lowest tax threshold that is over 2,000,000VND (tax rate of 10%); The highest tax threshold in the partially progressive tariff as for foreigner, is over 120,000,000VND (tax rate of 50%), is fifteen times of the lowest tax threshold that is over 8,000,000VND (tax rate of 10%).
- (6) As for citizens, who have remaining income after paying income tax of over 8,000,000 per month, will have to pay surcharge tax of 30% to the income exceeding 8,000,000 VND. Thus, it does not

encourage the foreign enterprises to pay higher income for Vietnamese who has high level. Because employees pay attention to only net income, while employers pay attention to total costs for labor, therefore when they pay the same net income for whether Vietnamese or foreigner who has the same level so costs for Vietnamese labor is much higher than foreigner labor. For example: a Vietnamese labor has a labor contract in which net income is 13,000,000VND per month. In this case, employer has to pay a salary of nearly 30,000,000VND, while as for a foreign labor has the same net income of 13,000,000VND but employer has to pay a salary of only 13,600,000VND. This is a hot matter, which foreign investors have been reacting actively to the Government.

(7) Some orientations need to be reformed continuously:

In short-term, we need to adjust the tax threshold in the partially progressive tariff as for Vietnamese regular income in order to solve two big problems:

Firstly, to decrease the different tax obligation between Vietnamese and foreigner;

Secondly, to give more advantages to investors through adjustment of the tax threshold and levels of the taxable income in the tariff. Therefore, investors will be able to decrease costs of labor, while they will still able to pay higher salary for Vietnamese labor.

Levels of the taxable income in the tariff are required to adjust when the tax threshold is adjusted. Thus, the distance among the tax rates in Vietnamese tariff should be expanded at the same time as well. Recently, the Ministry of Finance has promptly drafted the Amendment and Supplement Ordinance on some sections of Ordinance on Income Tax of High Earners in order to resolve the above-mentioned urgent problems.

For a long term, Law on Personal Income Tax has been issued to adjust all individuals who have their income from a various kind of sources. Therefore, the current business households, who have been imposed the corporation tax, will be imposed the personal income tax in the following time and the farmers, who are now subject to the agricultural land use tax, will be subject to the corporation tax.

To implement the second-step tax reform, the Vietnamese National Assembly has dropped the purpose of this session's law construction program, which is to issue the personal income tax. The Prime Minister also have the Decision No of date...month...year... to establish a edition group on personal income tax project with purpose of drafting the law project which will be submitted the National Assembly for approval in 2001.

Promulgation of the personal income tax law should focus on the following contents:

- To clear the basis of defining the tax payers in two forms such as: resident and income arising sources. Instead of imposing the foreigners as current time, the "resident" term will be applied for all taxpayers.
- Instead of imposing particularly, the taxpayers will include the business individuals. Each

individual, which has income from both business and wages, will have to sum up on the tax declaration and be applied the same tariff.

- For taxable income: it is estimated to distinguish the income from the labor, investment and gifts. So that, we have the suitable attitude and adjustment for each income.
- For tax tariff: in a long term, personal income tax needs to have the partially aggressive tax applying for all tax payers (both the Vietnamese and the foreigners), but for the existing historical factor of the Ordinance on Income Tax of High Income Earners and the flexibility of the law project, at the early time, we should implement the law project according to the 2 followings:
 - + The first plan: to continue remaining 2 current different tax tariffs but reduces the tax threshold in order to expand the scale. Both will have the same tax rates and the income balance among the tax levels will be larger than now (Income level of the maximum tax rate will be higher 20 times than income level of the minimum tax rate). All tax rates at each level also adjust to fall down with purpose of gaining the maximum tax rate of 40%.
 - + The second plan: to build the unified tax tariffs and expand tax-paying scale with low tax rates. However, because of the big difference between the income of the Vietnamese and the foreigners and between the consuming need and habit, we should distinct the exemption rate between these objects.

For discussion, the first plan should be implemented in the early time and the second plan should be implemented 5 year later (from 2007).

The export-import duty

In the Vietnamese tax system, the export-import duty was the first kind of tax promulgated in writing on 29th December 1987 named a Trade Export-Import Tax Law. The law was promulgated to strengthen the management of state-owned enterprises' trade export-import activities, to contribute on implementing the external economic policy in the first period of renovation, to establish the suitable import structure, to conduct the import activities and consumption, to protect initially the domestic production, and to create the revenue to the state budget.

Since 1990, the disintegration of the economic interdependent council has strongly affected to the international trade activity of Viet Nam, the Export-Import Duty Law promulgated in December 1991 and took effect in March 1992 while the Government was implementing the fair economic policy among the economic sectors and shifting the closed economy to the open one.

As compared to the former law, the Export-Import Duty Law (1991) has expressed the unification of tax obligation between trade and non-trade import goods. This tax is applied to the goods permitted to be exported or imported passing the frontier of Viet Nam and the goods from the domestic market to the export processing zone and vice versa...

The goods will be considered for duty exemptions in the following cases: goods transported through

the frontier of Viet Nam, goods imported or exported according to the method and the goods aided.

The export-import duty is calculated basing on the quantity of goods written on export-import the declaration forms, taxable price and tax rate of each good.

The taxable price applied to the exported-goods is the selling price in the trade contract at customs, not including the insurance cost and freight. As for the imported goods, the taxable price is the purchasing price in the trade contract at customs including the insurance cost and freight. To prevent the tax invasion through the price, the tax offices are permitted to apply tax calculation table regulated by the State to the goods which are needed to manage according to the minimum price, in case where the findings on fraud and unreal event made in the trade contract.

Import duty applied to imported goods consist of normal rate stipulated in the tariff nomenclature and the preferential rate applied to imported goods originating from a country which signed an agreement with preferential provision in trading with Viet Nam.

Import tariff nomenclature is made to base on the description list and goods code of the world customs organization instead of the goods list of the SEV system last time. Import tariff nomenclature includes 36 levels of rate, in which duty of 0% is applied to chemistry goods, medicine, planes and most of equipment that have yet not produced in domestic market, duty of 200% is applied to the car with 5 chairs at least.

In order to implement the cultural, economic policies on the foreign investment incentives, exported goods production incentives, science and education development, Some kinds of goods are considered for duty exemption by the Law in the following cases: temporarily imported to exported or temporarily exported to imported for the trade fairs or exhibitions; specialized goods for national security and defense, scientific research and education; imported goods of the foreign investment enterprises to the fixed asset; imported materials for export production; goods imported as gift, present and moving asset; goods imported of foreign organizations, individuals pursuant to the external relation exemption provision.

During the implementation of the Law on Export-Import Duty from 1991 to 1995, we have achieved basically the required goals which are protection of domestic trade and production, establish the revenue to the state budget (see appendix of the above-mentioned revenue structure to the state budget), make a contribution to create a fair comparative environment for the domestic production enterprises. Besides, the Law on Export-Import Duty has basic contents in accordance with international routine.

However, because of the requirement of the industrialization and modernization process, expanding the foreign cooperation moving to multilateralization and diversification orientation, implementing the international commitment during the integration, the Law on the Export-Import Duty has been amended and supplemented several times. It is considerable that the Standing Committee of National Assembly dropped the resolution for the amendment of import tariff rate on Oct 1995. The maximum has decreased to 60%, rate levels of the tariff nomenclature has fallen down to 28 levels in details with the lowest rate

of 0%, the highest rate of 60%. When some items were applied to the high rate as cars, air conditioners, the reduction balance of import tax rate will be computed and designed to transfer to the special consumption duty.

To adapt with the international commitment of trade during the integration process into the regional and global economy and the implementation of the unified duty system reform, the National Assembly passed the Law on Amendment of Some Articles of the Law on Export, Import Duty on Apr, 1998 after dropping the Law on Value Added Tax. The amendment contents focus on the followings:

First, to amend the regulations of preferential rate applied to imported goods originating from a country which signed an agreement with MFN provision in trading relation with Viet Nam and tariff range for each group of products in the preferential schedule.

Second, to amend the regulations of normal rate applied to imported goods originating from a country which has not signed an agreement with MFN provision in trading relation with Viet Nam. The normal rate is provided to be higher than the preferential rate of a particular good.

Third, to supplement the special preferential rate applied to imported goods originating from a country, which signed a special preferential agreement on import duty with Viet Nam.

Fourth, to supplement a supplementary duty in addition to the special cases to establish the law basis on domestic production protection and accord with international routine in commercialization process. Supplementary duty is applied to the following cases: goods imported into Viet Nam at prices that are much lower than normal price because of anti-dumping action; goods imported into Viet Nam at prices that are much lower than the normal price due to subsidy granted by the exporting country; goods imported into Viet Nam originating from a country which applied a discriminating policy on tariff for the Vietnamese goods.

Fifth, to supplement and amend some of the regulations in order to create more favorable conditions to implement the reform of administration procedures such as the regulation for tax checking and computation time, tax notification, expanding the duration of duty payment, providing the details of exemption and resolving procedures, tax checking and recollecting with respect to tax exemption goods but it is used to be not correct purpose...

In the other words, the Law on Export-Import Duty provided continuously the Government having a right to adjust the detail tax rates in the provided tax rate frame scope in order to accord with the protective policy implement of the domestic production and the export-import management means.

In the process of ten years implement, the Law on Export-Import Duty has actually been an efficient instrument to guarantee the revenue to the state budget, to protect and encourage the domestic production and to accord with the international routine. However, the protective process of domestic production through the tax and on-tax means, the Vietnamese economy has been having a manifestation of the domestic production economy, which accompanies limit of importation rather than the export orientation

economy. The general situation in recent time is mostly enterprises asking the State to increase the import duty with respect to their products, which could be produced or expanded duration of protection, while the requirement of technological renovation, productive re-arrangement organization, productive cost decreasing means...are not implemented sufficiently.

In the addition, the Vietnamese import duty policy has showed some shortcomings such as: lacking of stable and neutralist characteristics, lacking of select protection and not calculating adequately of conditions and protect duration. It creates dependent psychology of enterprises, which do not improve renovation of equipment, productive technology and management in order to increase the competition of Vietnamese goods.

In the coming time, the export-import duty policy need to be amended and supplemented as following:

- The protection of domestic production should be efficient, selected basing on conditions of quality standard, price and duration. Basing on long-term economy development strategy and integrated process, we need to determine branches having to be protected, protective level and detail steps.
- The export-import duty tariff will be made to accord with international commitment on tax reducing when sign the international treaty. Re-arrangement and adjustment of tax rates reducing are in accordance with good classification following "description list and good code" of the world custom organization (HS list) and simultaneously reducing a number of tax rate levels in order to decrease difficulties of tariff.
- Guaranteeing efficient contribution level to the state budget and re-arrangement of resources distribution in order to accord with the tax system reform process.
- Implement of taxization of non-tax protection means bases on the current non-tax protection level and declaring simultaneously the tax reducing process, detail tax rate levels with respect to the taxization cases.
- Reducing gradually the good list, which the State needs to manage the minimum taxable price and expanding cases applying the contract price in order to implement adequately regulations of taxable price determination as followed GATT/WTO.

The current revenue policy on land

The Law on Land on 14th July 1993 and the Law on Amendment and Supplement on Some Articles of the Law on Land on 2nd December 1998 have provided that land belongs to the public ownership managed by the State. The State has delivered to organizations, households and individuals for long-term and steady land using right in the forms of land using and land lease.

According to Article 22, 79 of the Law on Land, organizations, households and individuals who have been delivered, leased by the State, has obligations to pay tax and other revenue in the following cases:

- Land using charge in cases of the State delivering land using right; and the State allowing

purpose change for using some kinds of land.

- Land rental in case of the State's land lease.
- The agricultural land using tax on land which the State delivers to be used for agricultural production purpose.
- The land and housing tax on living land and construction land.
- The tax on transfer of land using right as transferring land using right to other people.
- The value added tax and the corporation income tax on the activities of house business, infrastructure business and releasing land on which the infrastructure has been delivered and rented by the State.
- Land charge as doing the land procedures; registration charge as registering land using right.
- Besides, objects that the State delivered land using right and leased land, have also obligation to compensate all damages caused for legal land users retrieved by the State to deliver for those objects.

The followings are the main contents and difficulties arising during the implementation of the above mentioned policies and some suggestions:

(1) Land using charge regime:

Land using charge regime applied to all organizations, households and individuals (to be called the "land users") in the followings:

- Land users for the purpose of building house, infrastructure and house construction investment to be sold or leased; or organizations have been delivered land to create capital for building infrastructure according to projects regulated by the Prime Minister.
- Land users are allowed to change land using purposes from agricultural, forestry, aquicultural, specialized, salt making, leasing land and the land used for defense, security, national benefit, public benefit to house land or infrastructure business land.
- Land users who have not been yet approved before, have been granted the certificate of land using right by the authorities.
- Individuals are permitted to purchase houses rented by the State.

The land using charge basic is land acreage (m²) delivered or changed land using purposes and the rate (%) of land's price (VND/m²) at the time of land using charge collection.

The price of land for purpose of calculating tax according to kinds, classes, geography areas and urban levels of land is determined by the Provincial People Committees in the frame provided by the Government.

The rates (%) of land's price include 10%, 20%, 40% and 100% determined by land origin and detail period. 10% applied for land to build multi-storeyed house, 100% applied for delivered new

land and cases used steady land before the time of promulgation of the Law on Land (15/10/1993).

The land using charge regime provided exemption and reduction for policy objectives, people devoted for revolution, preferential objectives in the Law on Domestic Invested Encouragement and other cases provided by the Government.

(2) Land rental:

The land rental regime applied to all organizations and individuals who lease the state's land to use for the purpose of business production (excluding case of domestic organizations and individuals that are delivered land by the State to use for the purpose of agricultural, forestry, aquicultural and salt making production is not subject to pay land using charge and land rental).

Land rental is determined to base on land acreage and the price of land lease discriminated between domestic and foreign investment.

The price of land lease with respect to domestic organizations and individuals, which is implemented by the Decision of 1357-TC/QD/TCT on 30th December 1995 of the Minister of the Ministry of Finance, is determined by the rate (%) of land's price regulated by the Provincial People Committees in the frame provided by the Government. For example: the rate (%) of land's price, which is 0.5% as for the branches of production, construction, transportation, and is 0.7% as for the branches of trade, tourism and service.

With respect to foreign investment sector, the maximum and minimum price frame of land lease according to types of land, area, coefficient of adjustment on branch, location, infrastructure is provided by the Ministry of Finance. Then, basing on that, the authority issued the investment license decided the price of land lease as for the detail projects. Since the Law on Land took effect, the Ministry of Finance has adjusted to decrease the price of land lease two times in 1994, 1998 and in fact the provinces mostly have adjusted continuously to decrease more the price of land in order to absorb foreign investment to those provinces.

There are so many cases of exemption and reduction for land rental such as in case of investors paid land rental in advance for many years, projects invested in the fields or areas for invested encouragement as provided in the Law on Domestic Invested Encouragement and the Law on Foreign Investment in Viet Nam.

(3) The agricultural land using tax:

This tax was passed on 10th July 1993 and took effect on 1st January 1994 to replace the former agricultural tax ordinance.

Taxpayers are all organizations, households and individuals that are delivered land for purposes of agricultural, forestry production and aquiculture.

The foreign enterprises or individuals that invest in Viet Nam and use agricultural land, shall pay the land rental according to the Law on Foreign Investment in Viet Nam, not subject to the agricultural land using tax.

Land, which is subject to the agricultural land using tax, includes arable land, land with water surface for aquiculture, land for forestations. Land is subject to be exempted from the tax, includes land with natural forest, natural grass field, land for residence and specified land.

The tax due is calculated on the basis of the acreage, the class of land and the tax rate.

The taxable acreage is the acreage of land transferred to land users according to the State's land registration book.

The class of land is determined on the basis of the quality of land, location, geographical, climate and irrigation condition. The classification of land is fixed for 10 years. The land for annual plants and land with water surface for aquiculture are divided into 6 classes and land for perennial plants are divided into 5 classes.

The tax rate is specified in the term of amount of kilogram of paddy per unit of acreage of the class of land. The tax rates are applied as follows:

For land used annual plants and aquiculture (Kg paddy per ha):

+ Class 1	550
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...

+ Class 6	50
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For land used for perennial plants:

+ Class 1	650
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...

+ Class 5	80
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For land used for wood and perennial plants that are harvested just one times, is subject to pay tax of 4% of the product value. Besides, in the case where acreage used exceed the limit specified in the Law on Land, the tax imposed on total acreage used and the additional tax shall be paid on the part of acreage exceeding limit with the tax rate of 20% of average tax per unit of acreage of the class of land.

Agricultural land using tax is calculated in term of paddy and is paid in cash. The price of paddy is determined by the Provincial People Committees and this price can be 10% lower than the market price in taxable period.

The Law on Agricultural Land Using Tax provided the cases of exemption and reduction for people producing in mountainous, island and ethnic minority areas. Tax exemption is for the bare land, hill and mountain that used for production of agriculture and forestry, protective and special forest plant, reclaim waste land. Tax exemption limitedly is for households and individuals moving to the new economic regions. Moreover, in the case of the crop is damaged by the natural calamities, insects, and

enemy-inflited destruction, if damage is from 10% to 40%, will get tax reduction from 10% to 80% and if damage is over 40%, will be exempted from tax.

(4) The land and housing tax:

The Ordinance on Land and Housing Tax was promulgated in 1992. In 1994, the Ordinance on Amendment of and Addition to a number of Articles of the Ordinance on Land and Housing Tax was introduced and into force.

The land and housing tax imposed on land used for residence and constructive projects. However, in the current situation, the housing tax is, temporarily, not regulated and collected.

Taxpayers are all organizations, individuals who have the right to use land for residence and constructive projects.

Either domestic and foreign organizations, individuals, who rent land, shall not pay land tax, Where enterprises with foreign invested capital, which use land and have paid the land rent as specified by the State, shall not pay land tax during the contracts time.

The taxable land includes the total acreage of residential land, land for constructive projects. However, land used for public purposes, social benefit or charity such as parks, stadiums, schools, irrigation projects, places of historical interest, pagoda, churches... shall not be subject to the land tax.

The land tax is calculated on the basis of acreage, the class of land and the tax rate specified in term of unit of acreage. The taxable acreage includes land acreage for building house and project, land acreage in constructive precinct (including even bare land acreage).

The tax rates discriminated among regions and areas that depended on types of urban, infrastructure conditions. As for residential land, land for constructive projects in urban areas, the tax rates are varies from 3 to 32 times as much as the rates of the agricultural land using tax. As for land in suburb areas and in nearly transportation areas, the tax rates are varies from 1,5 to 2,5 times as much as the rates of the agricultural land using tax. As for land in countryside area, the tax rate is equivalent to the average tax rate of the agricultural land using tax in the communicability.

The Ordinance on Housing and Land Tax provided temporarily exemption for cases: land used for building office of administration and non-productive activities, social organizations, cultural projects; specified land used for the purpose of defense and security; land used in remote, island and mountainous areas; land belongs to invalids, sick soldiers, revolutionary martyr family, people devoting to revolutions, disable people, old people living alone... Moreover, in the case of taxpayers had difficulties caused by natural calamities, enemy-inflited destruction and unexpected accident, will be possibly exempted or reduced from tax.

(5) The tax on transfer of land using right:

The Law on Tax on Transfer of Land Using Right was promulgated on 1st July 1994 to adjust income arising from transferring of land using right. The tax rates are 5%, 10%, 20% and 40% depending on land origin and number of times on transfer of land using right.

In December 1999 the law was amended and supplemented in order to decrease and simplify the tax rates and provide clearer cases not subject to this tax.

Organizations, households and individuals, who have land using right, shall pay land using right transfer tax whenever a land using right transferred. However, the following cases of transfer are not subject to this tax:

- The State taking back partly or wholly the land from landlord as specified in the Law on Land.
- The land using right is transferred to inheritors as specified in Land Law,
- The land using right is transferred among people in the same household when it divided or between wife and husband when they divorced,
- Landlords using land for the purpose of rent.

The land using right transfer tax is calculated on the basis of the land acreage, the price of land and the tax rates. The price of land for purpose of calculating this tax is determined by the Provincial People Committees in the frame provided by the Government.

The tax rate is divided into 2 types: the tax rate of 2% applied for land for agricultural and forestry production, aquiculture, salt making; the tax rate of 4% applied for house land, land for project construction and other kinds.

The Law on Tax on Transfer of Land Using Right provided exemption for the following cases: Households and individuals moving to be resided in the new economic, mountainous and island regions by the authority's decisions; transfer of land using right in the mountainous and island communes; transfer of land using right to each other in cases of land used for agricultural and forestry production, aquiculture, salt making; and the economic organizations that are delivered land by the State, and have already paid land using charge in order to invest house construction for selling and infrastructure construction for transferring.

The Law on Tax on Transfer of Land Using Right also provided tax reduction of 50% for the following cases: invalids, sick soldiers, revolutionary martyr family, disable people, old people living alone...

Some problems arising in the process of implementation of the revenue policy on land need to be amended and supplemented as following:

- Kinds of taxes and revenue related to land as mentioned above to show us that there are currently lots of types of revenue on land and such regulations which are not in accordance

with reality and happening of socio- economy. For example: some kinds of soil land in the countryside are subject to the Law on Agricultural Land Using Tax or the Ordinance on Housing and Land Tax either. Moreover, some cases of land using right transfer with simultaneously changing for using purpose from agricultural land to non-agricultural land are subject to the tax on transfer of land using right or subject to land using charge either...

- The revenue policy on land is not satisfactory in term of relationship between the State and land users who are delivered or leased land by the State. Land users have to pay land using charge or land rental and also compensate all damages caused for legal land users retrieved by the State to deliver for those land users. On 23rd August 2000, the Government promulgated the Decree 38/2000/ND-CP on land using charge revenue policy in which projectors delivered land by the State are exempted 90% of total charge for compensating damages. With respect to cases leased the State's land, need to be applied similar to cases delivered land by the State.
- The contributive policy on land using by the agricultural land using tax and the housing and land tax is not so sensible because it does not go with the price of land. For example: In Hanoi, the agricultural land using tax is 550 kg paddy per ha per year of the first class of agricultural land as compared to land's price of 19,300VND/m² so that the contributive rate is 0.42%. While the land and housing tax with respect to urban land is 32 times of the rate of the agricultural land using tax as compared to land's price of 11,500,000VND/m² so that the contributive rate is just 0.022%.
- The agricultural land using tax discriminated the tax rates between land used for annual and perennial plants, and also the classes of land. Therefore it seems to limit land using right that is not suitable to the market mechanism and to be difficult to tax collection and management.
- Although revenue mechanism of land using charge has been amended but it is still not sensible. For example: buying houses, which are owned by the State, has to pay the land using charge basing on land acreage (m²) and the rate of 40% of land's price. However, if comparing to land users who had illegal documents before 1993, shall pay the land using charge basing on land acreage (m²) and the rate of just 20% of land's price.
- Land rental has still difference between the domestic and foreign investors on the prices of land lease. In the coming time, we need to not only readjust the price of land lease also need to amend the compensative policy for all damages caused for legal land users retrieved by the State to the investors who lease the State's land in order to absorb investment.

Social Insurance in Viet Nam

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Part 1 Viet Nam social insurance system; major issues in social benefit, health insurance and unemployment insurance

A. Social insurance system

Social insurance is an important policy which attracts the Viet Nam State's interest from the date of State establishment. However, under war condition, Viet Nam economy was underdeveloped so that the implementation of social insurance policy issued before 1961 was very limited.

Period from 1961 to 1985

The Government issued the temporary Regulation on Social Insurance following the Government Decree N0 218/CP dated 27th December 1961 aiming at concretizing the stipulations of 1959 Constitutions on social insurance.

1. **Scope:** all of public servants; those working in the Communist Party's Office, social - political organizations and state-owned enterprises.
2. **Social insurance covers 6 circumstances:**
 - Sickness;
 - Maternity;
 - Employment injury and occupational diseases;
 - Pension;
 - Survivors;
 - Labour incapacitation.
3. Social insurance expenditures for social benefit are met by contributions from employers, employees and the state budget.
4. **Social security management and implementation**
 - The Ministry of Labour, Invalids and Social Affairs is responsible for management 3 policies: labour incapacitation, pension and survivors.
 - The Viet Nam General Federation of Labour is responsible for management 3 regimes: sickness, maternity, employment injury and occupational diseases.

Beside the regimes for cadres, workers, civil servants, the Government also issues the priority regulation for employee working in the armed forces.

Period from 1985 to 1994

The Council of Ministers issued Decree N0 236/HDBT dated 18th September 1985 on amendment social insurance policy for state workers, staffs and civil servants. Social insurance policy promulgated by virtue of Decree N0 236/HDBT is more comprehensive and concrete than that of Decree N0218/CP. In particular, the new social insurance policy paid more attentions to employees working in remote areas or islands and labourers doing especially heavy and noxious jobs or in war condition.

By the end of 1994, social insurance policy ensured allowance for more than 6 million times of persons receiving maternity allowance; more than 2 billion days of sickness; 30,000 persons receiving Employment Injury and Occupational Diseases allowance; 1.5 million pensioners, of whom 160,000 employees working in armed forces; 300,000 persons receiving monthly survivors allowance; hundreds of thousand persons receiving recuperative regime.

However, social insurance policy in the period of 1985-1994 revealed several problems:

1. Social insurance policy applies only to state workers and armed force' employees which discourages the development of multi-sectored economy, especially It is very difficult to remove labourers from state sector to private sector or vice-versa. At the same time, it does not create equality between the labourers' right of working and their right of receiving social wealfare from different sectors of the economy.
2. Social insurance policy did not stipulate the relationship between contribution and benefit. Therefore, the state budget had to subsidize more and more by the time. Insurable persons were not aware of their rights and responsibilities when participating in social insurance program. From 1990 to 1994, the state budget subsidized more than 90% social insurance expenditure on average, at the same time suffering an increase of 15,000 pensioners and incapacity labourers a year. These were main reasons that social insurance fund is always in shortage situation.
3. Operation of the social insurance organization was inflexible and buraucratic that caused many troublesomes for employees and employers.
4. The organization, management and implementation was scattered, management process also included social priority, social relief, social security so the implementation was overlapped and ineffective.

Period from 1994 to now

Under these above situations, the State has a policy to renovate social insurance and this was stipulated in 1992 Constitution: "the State implements social insurance for civil servants and persons receiving monthly salary, at the same time encourages other forms of social insurance for labourers". This content

derives from objective requirement to create equality of labourers' right of receiving social allowance belonging to every economic sectors, at the same time this is a fundamental policy to establish equal and civilized social security.

In order to concretize the guideline and make it suitable with managerial mechanism of multi-sectored economy, social insurance policy was basically amended. The Labour Code was approved at the fifth session of the National Assembly IX on 23rd June 1994 stipulates:

Article 140

- 1- The State shall enact policies on social insurance aiming at gradually expanding and raising the material well-being of the labourers and their family, thus contributing to the stabilization of their life in case of his sickness, maternity, at the end of his or her labouring age, his or her death or meeting a labour accident or contracting an occupational disease, losing his or her job or meeting with others misfortunes and difficulties.
- 2- Various forms of obligatory or voluntary social insurance shall be applied to each type of labourers and business aimed at assuring that the labourers have access to appropriate forms of social insurance.

Article 141

- 1- Obligatory forms of social insurance apply to the businesses employing more than 10 labourers.
At these businesses, the labour user as well as the labourers must pay their social insurance premium as defined at Article 148 of this Code and the labourers is beneficiary of social insurance allowances in case of sickness, labour accident, occupational diseases, pregnancy, retirement and death.
- 2- With regard to the labourers working in a place employing less than 3 months, jobs of seasonal or temporary character, his social insurance allowance shall be included in his salary paid by the labour user so that he can join a social insurance scheme of his choice or look after his own insurance.

After the Labour Code is approved, the Government issued the Social Security Regulation following Decree N0 12/CP dated 26th January 1995. The Social Security Regulation determines its basic aim is to fully implement social insurance scheme stipulated in the Labour Code; contributing to stabilize Labour' life in case of his sickness, pregnancy of woman labourers, at the end of his or her labouring age...

Some major contents of the new social insurance policy.

The social security fund: The social security fund is formed by the following resources:

1. The contribution of employers and employees.
2. The Government will set aside finance to pay for and support the implementation of the social security scheme for labourers.

3. Interest from activity aim at maintaining the value, investing and developing the social security fund.
4. Assistance or donation of internal and external persons, organizations.
5. Other resources.

Social insurance allowance policy includes 5 regimes: sickness, maternity, employment injury and occupational diseases, pension, survivors.

The state budget sets aside a certain amount to pay for insured person who entitled to receive social insurance allowance before 1st January 1995. The amount is accounted and audited independently in accordance with stipulations of The State Budget Law. Expenditures include:

- Retirement pension;
- Labour incapacitation allowance;
- Employment injury allowance, allowance for person who serve employment injury labourers and rehabilitation services for injury labourers;
- Occupational diseases allowance;
- Allowance for rubber workers;
- Survivors and funeral allowance;
- Health insurance premium;
- Payment fee;
- Other expenditures.

Social security fund pays for insured persons who entitled to receive social insurance allowance before 1st January 1995. They are following expenditures:

- Monthly pension and package allowance;
- Employment injury allowance, allowance for person who serve employment injury labourers and rehabilitation services for injury labourers;
- Sickness allowance;
- Maternity allowance;
- Occupational diseases allowance;
- Survivors and funeral allowance;
- Health insurance premium;
- Other expenditures.

Operation of maintainance the value and development the social insurance fund

Viet Nam Social Insurance Office has the right to use the reserve fund to carry out methods to maintain and develop the fund. The investment of the social insurance fund has to assure safety, minimum all risks, maintain the value and obtain social-economic effect.

Viet Nam Social Insurance Office has right to use the reserve fund to carry out following methods to maintain and develop it's value:

- Buying state bonds and bonds of state banks;
- Lending the state budget, development Assistance Fund and state commercial bank;
- Investing in to some projects and state-owned enterprises with guarantee of the Prime Minister.

The new social insurance policy resolves basic problems and has multi-faced effects on social insurance.

Firstly, the new Regulation on Social Insurance has large scope including every labourers in all economic sectors. In the old regulation, insurable persons are mainly state staffs, workers and armed forces' employees, now expand to apply to all labourers working in offices, organizations, enterprises belonging to all economic sectors.

Secondly, the social insurance fund is contributed by labour users, labourers and the State. Of which, contribution from labour users and labourers is mainly. The employer contributes more than employee, linking the labourer right and obligation in the principal of having contribution will be received allowance; contribute much, allowance will be much; contribute little, allowance will be little. In the old mechanism, the state budget subsidized almost all social insurance allowance, now the social insurance fund is independent with the state budget. The fund gradually balances collection and expenditure, reducing subsidise from the state budget.

Thirdly, the State manages the social security nationally. This can be seen through the State issues legal documents of the social security regimes to guide, inspect and examine the implementation of social insurance policy. The Government sets up the unified social insurance organization to manage the fund and implementation of collecting and paying allowance for insured persons. This is a condition to assure the labourers' right accordance with their contributions, gradually overcome the old thought of considering social security fund as revenue and expenditure of the state budget. In the old mechanism, the management of implementation social security policy is scattered and bureaucratic; now is managed in Viet Nam unified social security organization operating as administrative-career unit for the social objective.

*** The achievements obtained through implementation the new social security policy.**

1. In 1995, Viet Nam social security organization was transferred 3.2 million labourers taking part social insurance regimes, 2.2 million ones of whom contributing social insurance belonging to 18,656 Units, organs and enterprises from Viet Nam General Federation of Labour. After 1995, there are more 39,160 Units and enterprises joining social insurance policy with 2.5 million insured labourers (increasing to 214%).

With the implementation of social insurance for larger insurable labourer scope, especially in non-state sector assures labourers' right to receive social allowance as well as the State and society' interest in case of sickness, maternity, occupational accident, retirement,... Labourers are happier

and working harder because they can freely change working places, overcoming difference between state labourers and non-state labourers and contributing to promote the development of non-state enterprises.

2. The social insurance fund is bigger and bigger, contributing to reduce the burden of the state budget. In 1994 (prior to renovation of social insurance policy), The fund collected about 420 billion VND throughout the Nation. In 1999, the fund collected 4.200 billion VND (about 10 times bigger than that of 1994).

The social insurance fund is formed to create long term assurance of social insurance allowance system. From 1998, the Prime Minister decides that the State budget expenses for cadres, state staffs, labourers working in military organization and enterprises taking leave from work before 1994 and receiving monthly pension and allowance. The social insurance fund collects and expenses for labourers taking leave from work from 1995. This remarks a renovation of Viet Nam social insurance policy. Implementation this decision, the state budget expenditure for social insurance gradually decreases (decrease about 3% a year) while the social insurance fund is continuously bigger.

Social security policy gradually gets rid of heavy subsidy and reduces the contribution from the State. At the same time, the social insurance fund stabilizes various allowances and contributes to develop the nation' socio-economic situation.

3. From 1995 to now, the social insurance fund pays allowance to more than 3 million times of sickness, 70,000 occupational accident labourers, over 300,000 maternity women, 510,000 persons receiving monthly pension and package allowance. The procedure of paying pension and other social insurance allowances has a deep progress. Viet Nam social insurance organization ensures to pay allowances fully and on time.

The provision of social insurance booklet is a manner to practice publicity and democracy which are legal bases to receive social insurance allowance. Up to now, the labourers were provided social insurance booklet equal to 91% of insured persons. Social insurance booklet replaces all old documents. Social insurance booklet owners may examine or monitor the booklet at any time. The booklet is also a mean to practice administrative reform in implementing social insurance regimes and policy.

At present, social insurance policy still reveals several problems to continue studying, amending and supplementing such as retirement age, occupational accident allowance regime, recuperative regime and expansion social security in non-state sector and voluntary social insurance.

The Ministry of Labour, Invalids and Social Affairs has submitted to the Government a draft of the Regulation on Voluntary Social Insurance.

B. Several issues on social allowances, health insurance and unemployment insurance

(1) The five current social insurance regimes

Analyzing five current social insurance regimes such as sickness, maternity, occupational disease, employment injury, pension and survivors stipulated in the new regulation on social security, we can see following advantages:

- a) **Sickness allowance:** There are stipulations about the time to receive allowance for labourers working in heavy or noxious jobs or in areas having regional classified at 0,7 or over; the rate of allowance for sick labourers need further extension of treatment time over 180 days equal to 70% or 65% of the salary receiving before sickness (in the old policy was 70% of the minimum salary). The new sickness regime is also expanded to apply for labourers who accept family planning methods. This means to be taken leave from work and received allowance like sickness regime.
- b) **Maternity regime:** accordance with the old policy, the period that employees taking leave from work and receiving allowance was 120 days with normal jobs or 150 days with heavy or noxious jobs. The new regulation also stipulate the period that employees taking leave from work and receiving allowance is 180 days for employees in areas having regional classified at 1,0 or doing special works. The special works are not only special heavy or noxious jobs but also unique special jobs such as ballet dancers, circus,... However, women working special heavy or noxious jobs entitle to take leave from work 120 days is a temporary solution due to the reality, in a long term need to restructure their works according to the Labour Code (not to arrange woman to heavy or noxious jobs).
- c) **Employment injury and occupational diseases:** the regulation stipulates clearly that the employer is responsible to pay the salary and expenditure for medical services including first aid, emergency treatment and whole injury treatment. After the injury is stabilized, the employer has to arrange the work in order to suit with the health condition of the employee. In case of labourer' death or disability, the employer has to compensate.

After being examined by the Health Examination Committee, the employee is reduced his labour capacity due to employment injury and occupational disease will be received allowance from social security fund. If the degree of disability is 5-30%, the employee is entitled to receive a lump sum allowance. If the degree of disability of 30% or over, the employee is entitled to receive monthly allowance with the level of allowance appropriate to the degree of disability. This is different from the old regulation, which employee only can receive monthly allowance if the degree of disability of 61% or over.

- d) **Retirement pension:** the new regulation stipulates more clearly about the cases of inefficient old age may be received monthly pension. This regulation aims at resolve the fact that person who has not gone through labour age but lose such his labour capacity (61% or over) that cannot work any longer. However, the retirement before determined age, the period contributing social insurance premium is

short so that the level of allowance pensioners receiving is lower than person who contribute social insurance premium longer. This is equality between practicing obligation and receiving allowance.

The new regulation also stipulates that pensioner having monthly pension allowance lower than the minimum salary, the allowance will be increased in to the minimum salary. This is assurance of the State and society to stabilize pensioner' life.

The maximum rate of pension allowance is 75% of the weighted average month's salary for last 5 years is lower than the old regulation of 95%. This new rate derives from the fact that:

- The old social insurance policy includes social priority when calculates pension. Now social priority policy is separated, it is stipulated in Ordinance of War Veterans.
- The old maximum rate of 95% is calculated by money salary not to take account to salary by object. The new pension is monetarized.

The new maximum rate of 75% may still cause a difficulty for persons having the low salary. With that rate, at some time State budget has to support to the social insurance fund because the contribution rate of 15% cannot pay the beneficiary rate of 75% while the number of pensioners increases annually. In the other countries, the pension allowance rate is determined at 40-60% of the average salary.

- e) **The monthly survivors** is lifted to 40% of the minimum salary and in case of dead labourers having many relatives can be considered to pay allowance. The new policy assures the relationship between survivors and persons receiving another social allowance.

(2) Insured persons of non-state enterprises.

Accordance to Article 141 of the Labour Code and Article 3 of the Regulation on Social Insurance issued by the virtue of of the Decree N0 12/CP dated 26th January 1995 of the Government:

Persons taking part social insurance are labourers working in all economic sectors employing from 10 labourers or over. Labourers in co-operatives, union of small-craft industrial co-operatives is not obligatory to take part in social insurance.

By the early 1999, the number of non-state enterprises taking part in social security was about 5,000 units with 362,620 labourers (accounted to 36% of insurable non-state labourers). Labourer in non-state enterprises is few because:

- Many non-state enterprises only have establishment permission but not actually operate or in unstable existing situation and the labour relation is unsustainable.
- Several enterprises operate ineffectively with little profit and labourers' income is so low that they cannot afford social insurance premium.
- Many enterprises escape from their responsibility by registering less than 10 labourers or signing short-term labour contract.
- Labourer is lack of awareness. They only want to be employed without taking care to their

own right of social insurance so they do not require employer to contribute social insurance premium.

- Under the suppression of too few jobs, authorized offices are embarrassing in implementing legal documents. They are afraid of forcing non-state enterprises to fully implement the Labour Code because it may cause enterprises do not want to employ more labourers or create more jobs.

This is very complicated problem that cannot immediately deal with the controversy between labourers, jobs and practice the law. Some local social insurance offices have propagandized and persuaded non-state enterprise owners, especially private companies about the significance of social insurance. On the other hand, local social insurance office must apply some powerful methods such as not to pay social allowance for enterprises which do not contribute social insurance premium during 1 year or over. These methods impact on both employee and employer forcing employees to take care of their own right and ask the employers to contribute social insurance premium fully. However, to force non-state enterprises positively paying social insurance premium for employees is necessary to issue the Law on Social Insurance and powerful method applying to enterprises which do not obey to social insurance policy.

(3) Social Insurance policy for non-agricultural labourers

Beside insured persons, in several producing sectors, social insurance policy is not applied such as in small-scale industrial co-operatives. In general, social insurance policy for members of co-operative is not applied due to lack of stable legal base to implement. Legal document on social insurance is not clear and unsuitable with environment and operational condition of this sector. The current social insurance policy does not determine how to contribute social insurance premium but only stipulate that non-state enterprises with 10 employees or over have to pay social insurance premium compulsorily. In fact, when co-operatives go to social insurance office to pay the premium, the office cannot collect because of not being authorized by The Ministry of Labour, Invalids and Social Affairs and Viet Nam social insurance organization. Therefore, thousands of labourers in co-operatives wish to join social insurance scheme while other enterprises which are obligatory to take part social insurance avoiding to join. On the other hand, if implementation social insurance policy defined in Decree N0 12/CP dated 25th January 1995, co-operatives will have some difficulty. Co-operatives were reorganized in the short time so having low profit if they have to pay social insurance premium of 20% (labourers contribute 5%, co-operative 15%), they will not be able to afford.

- (4) Voluntary pension social insurance:** the number of person's participation in compulsory social insurance is much smaller than the total number of labour aged persons. Many of them are not permitted to participate to social insurance policy because voluntary social insurance policy is still not issued.

They are mainly farmers, working in agricultural sector in the rural areas of Viet Nam. Implementation social insurance for labourers in the rural areas is necessary, meet the demand of most of the agricultural labourers, suit with the aim for fair and civilized society, mobilize capital to expand manufacture. Hence, implementation social insurance for farmers (firstly is voluntary pension social insurance), policymakers shall take care some following principals:

Insured persons: including labourers with their income calculated by money or object which can be changed in to money are not belong to compulsory social insurance such as: agricultural labourers, members of small-scale industrial co-operatives, forestry, fishery, salt producers, handicraft labourers, free labourers, dealers,

Social insurance contribution: contributors of voluntary social insurance include many kinds of labourers with different incomes so need to determined contribution frame which everybody can afford but still guarantee balance of collection and payment.

Voluntary social insurance policy: policymakers should choose one kind of voluntary social insurance which insures payment and meets demand of labourers; determine contribution and benefit frame; create closely long-solid relation between contribution to and benefit of social insurance.

- (5) **Unemployed insurance:** is studying and expect to be applied compulsorily for persons who join in compulsory social insurance. Static's said that at the end of 1997, the rate of unemployment person in the state-owned enterprises is estimated about 8%, in other sectors, the number is much higher. Thus, implementation of unemployment insurance is very necessary. In the joint effort of the State and enterprises, the rate of unemployment was expected to reduce to 8% by the year 2000, 5% in 2005, 3% in 2010.

Estimated unemployment person

Year	2000	2005	2010
Total of insured persons	5,400	12,500	20,000
Medium unemployment(1000 persons)	430	625	600
The rate of unemployment (the number of unemployment/total of insured persons)	8%	5%	3%

- (6) **Health insurance:** Health insurance is a social policy organized by the government to mobilize contribution from employers, employees, organizations, and individuals in order to cover health care for insured persons in case of sickness.

Compulsory health insurance has implemented since October 1998, applying for:

a) Viet Nam employees working in:

- State enterprises including armed forces enterprises;
- Business belong to State, governmental administrative organizations, Party organizations and social-political organizations;

- Enterprises with foreign investment, processing zones, industrial zones, foreign and international organizations in Viet Nam territory;
- Non-state business organizations, enterprises with 10 employees and more ;
- b) Civil servants and staffs working in administrative organizations; those who work in the Party offices, social-political organizations, cadres at commune and ward level.
- c) Pensioners, those enjoying monthly social insurance due to labour disability.
- d) Those who merit with revolution according to the Law.
- e) Special groups provided by social protection allowance through social security system.

Voluntary health insurance applies to everyone who wishes to participate to health insurance. The voluntary health insurance is implemented for social policy purposes, not for commercial ones. Insurance is not applied.

Voluntary health insurance applies to everyone, including foreigners who come to do business, study or go on tourism.

The Government encourages extension and diversification of voluntary schemes and at the same time encourages the Red Cross, charitable associations, grassroots organizations, state and private business units to contribute for buying health insurance for the poor.

Voluntary health insurance scheme include following forms:

- Out-patient treatment;
- In- patient treatment;
- Supplements to the compulsory scheme; and
- Other services.

Persons, who have voluntary health insurance cards, are entitled to health care expenditures appropriately with their contribution rates and the kinds of the scheme.

Part 2 Restructure social insurance system aimed at strengthening safety and promoting economic growth in Viet Nam

So that social insurance policy assures labourer' life better, contribute positively to social stability, safety and economic development. In the forthcoming period, social insurance policy needs studying to renovate and perfect following contents:

Firstly, social insurance policy continues to be studied, amended and added to suitable with socio-economic condition and assure labourer' right better.

- **Retirement age:** In the current rules, retirement age applying to labourers working in normal condition is 60 for man and 55 for woman. The retirement age is reduced to 55 for man and 50 for woman in case of labourer having 15 years in heavy or hazardous jobs, working in jobs classified at 0,7 or over.

Studying to increase retirement age over 55 year-old for woman and over 60 for man in some kinds of jobs such as scientific research, administrative management, economic management,... who have enough age to be retired but they are strong and can devote their talent for society and society also need them.

- Amending condition to be received package allowance for labourers. In the current policy, employees taking leave from work or ending the labour contract will be received a lump sum allowance. This policy do not assure labourer' long right of social insurance at least pension regime because in the following time, the package allowance is only applied when labourer is over labour-age or lose his 61 % of labour capacity or over.
- Amending and supplementing social insurance policy for labourer also concern to administrative management and operation of Viet Nam social insurance organization. In fact, there is overlapping, especially with the Ministry of Labour, Invalids and Social Affairs that need clearing accordance with the Government' administrative reform.
- **Secondly**, drafting the Law on Social Insurance to implement the Resolution of the 2nd section, National Assembly X.

Drafting the Law on Social Insurance is very important, urgent and necessary obligation. Therefore, to implement this obligation well, The Minister of Labour, Invalids and Social Affairs is authorized by the Government signed the decision to establish drafting board of the social insurance law. The preparation is implementing, including revision all social insurance policy, collection and study information, document of Viet Nam and foreign countries relating to building the social insurance law; drafting a system of opinions, contents of the social insurance law and require all people to given opinion before submitting the National Assembly to approve.

To obtain above contents, it is very necessary to determine basic aims and requirements. This is:

- The Law on Social Insurance must meet demand of the country's socio-economic renovation course and demand of strategic scheme for people in the period of industrialization, modernization, social equality and civilization. Social insurance policy must suit with mechanism, policy following general renewal guideline of the Viet Nam Communist Party and State, actually create condition for labourers working in any economic sector including housewife have right to take part social insurance scheme.
- Determining responsibility of employer, the role of trade union to assure legal right and equal right fully for all insured persons.
- Transferring financial mechanism from completely depending on the state budget to financial independence. The social insurance fund have to be audited independence, maintained the value and developed more and more to meet the demand of society and labourers expectation. The Law determines clearly social insurance organization and operation system. This is extremely important because organization system will impact much on effect of the Law.
- The operation of social insurance system with effective controlling and examining mechanism will

assure the right of labourers and full fund. The State can borrow the reserve fund to use for national purposes or people's life, contributing to stable socio-economic situation. On the contrary, the social insurance organization operates ineffectively, the fund will be broken down, the right of labourers will not be ensured, society and economy are unstable.

In preparation of building the social insurance law, the Government requires the Ministry of Labours, Invalids and Social Affairs to establish "the temporary regulation on social insurance regimes for rural and agricultural labourers". Implementation this obligation, the Ministry of Labours, Invalids and Social Affairs co-operate with other relevant ministries and branches to convey, study and draft the regulation and it now is perfecting.

Some solutions to promote social insurance development in the forthcoming period.

On the background of market economy, every people is equal in working and benefiting, having opportunity to develop, at the same time they can be faced to risks. Therefore, social insurance needs implementing "social security" for all members in society. Non-state enterprises develop very fast in the past years, contribute much and take part in social policies such as social insurance. If in the past time, social insurance is unique system, the fund for social insurance allowance is subsidized by the state budget. Now social insurance demand develops widely – whole society. This forces social insurance policy to have new development directions in order to meet the demand.

Firstly, continuing to perfect legal frame.

- Amendment and addition some social insurance regimes stipulated in the Regulation on Social Insurance issuing following the Decree NO 12/CP and 45/CP of the Government to overcome the current existing problems.
- Urgently building the social insurance law defined in the ...of the National Assembly X. Restructuring legal documents and social insurance management – establishing operational principal that can meet the social insurance requirement and obligation of the Viet Nam social insurance in the next time.
- Strengthening examination and monitoring the implementation social insurance policy in order to assured all regulations or rules be implemented fully, accuracy and on time.

Secondly, taking after development on scope including both insured persons and social insurance scheme.

Social insurance organization should manage to attract all labourers belonging to all economic sectors taking part social insurance. Largening insurable persons will contribute to transparent the nation's labour market. At present, enterprises with less than 10 labourers are not permitted to take part social insurance inspite of they have demand. However, it is very caution in widening insurable persons and need having appropriate step depending closely to Viet Nam' socio-economic situation as well as managerial capacity of social insurance organization.

- For compulsory social insurance: widening for labourers in enterprises with less than 10 employees, in co-operatives,...to reduce their risks, at the same time increase employer' responsibility for employee.

The level of contribution is determined appropriately balance of collection and expenditure of the social insurance fund.

- For voluntary social insurance fund: applying for rural labourers and independent labourers. Study and submit the Government to approve the Cecil insurance policy for non-state labourers (member of co-operative or free labourer in small-handy industry, agriculture, and fishery).
- Because their jobs is sotiphiscate and their income cannot be controlled, so that the method of implementation and premium need fluctuating. The State only issues legal frame, general guidelight, the contribution belong to labourer' income. The level of contribution and allowance will base on income.

Assuming insured person in 2010

Unit: 1000 persons

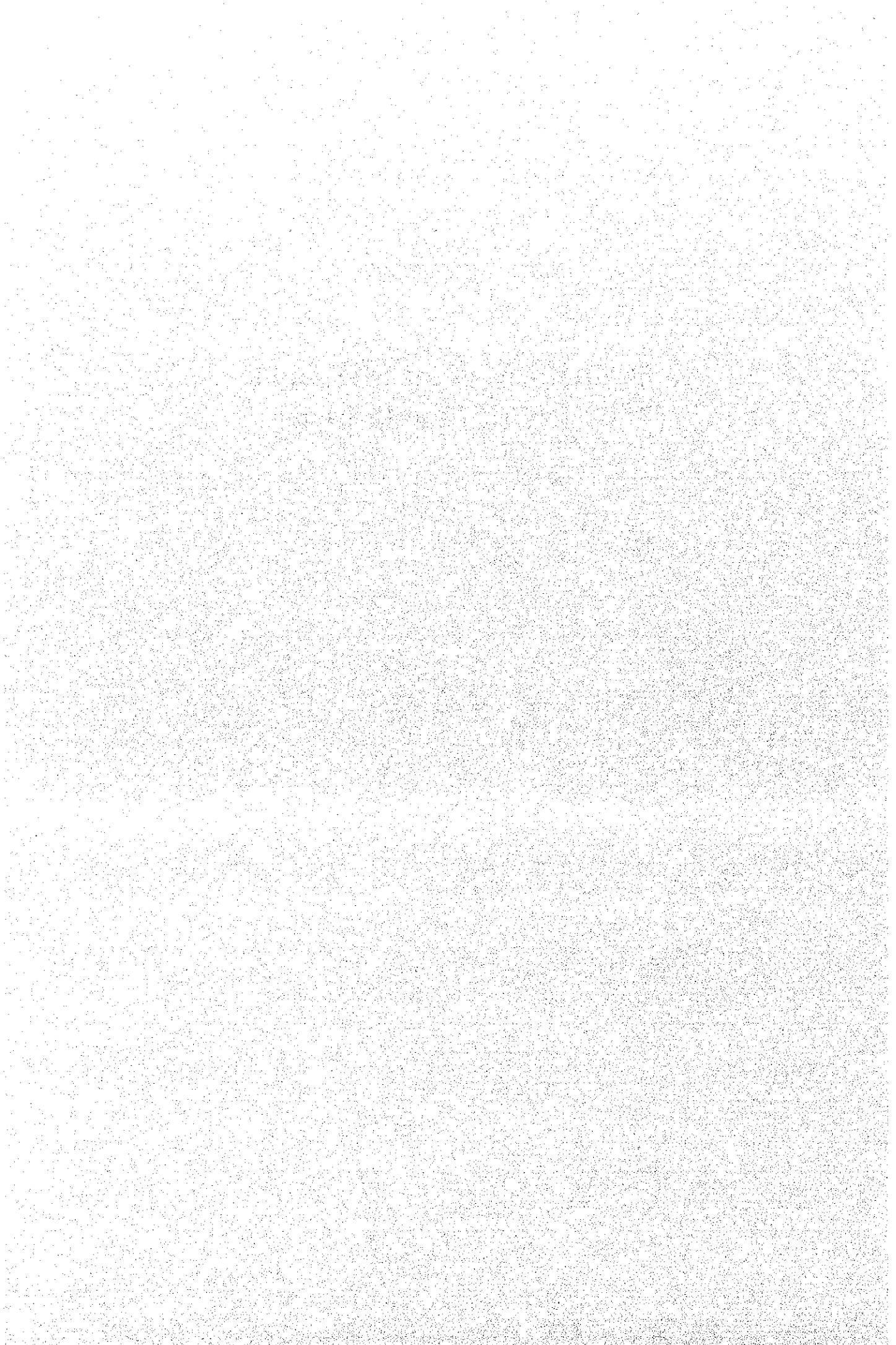
Year	2000	2005	2010
Compulsory social insurance	5,400	10,500	20,000
The state sector	3,400	5,000	7,000
Non-state sector	1,200	4,500	10,000
Voluntary social insurance	500	5,000	10,000

It is necessary to design various forms of voluntary social insurance, so that labourers can choose the form that is most suitable with their income. Beside the current social insurance scheme (sickness, maternity, employment accident, occupational diseases and survivors) there should have some forms of social insurance that apply to all labourers, consider it as a method to assure social security and practice social equality.

Thirdly, establishment and expansion the relationship among the Viet Nam social insurance and other foreign social insurance systems, firstly is social insurance of South East Asian nations.

Fourthly, development and perfecting organization' structure as well as materials and equipment of social insurance branch in order to meet the requirement of market economy.

B. Reforms of the SOEs and Their Fiscal Implications



Financial Relationship between State and State-Owned Enterprises in the Past Decade and Direction for the Next 10 Years

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Ministry of Finance

1. Financial relationship between State and state-owned enterprises (SOEs) in the past decade

(1) Continuing reform policy: In the 1990s, the State has promulgated a lot of policies on reforming SOEs' management activities, restructuring and reorganizing SOEs with the following targets:

- To separate the management function of State and the right to do business of enterprise.
- To give more autonomy to SOEs in its operation and financial management.
- To organize and restructure SOEs; dissolve and bankrupt unprofitable enterprises; merge and unify small-scale enterprises to improve the operation efficiency; carry out experiment of and expand equitization process, diversify ownership of SOEs.
- To direct SOEs gradually operating in market mechanism to create a fair "play-ground" for enterprises of all economic sectors.

Mechanism and policies on enterprises finance

(2) At the beginning of 1990, the State embarked a process of comprehensive reassessment of all SOEs' assets. This activity not only aimed at getting basic for making out 5-year plan for the period 1991-1995 but also forced SOEs to fully gather expenses in accordance with market-oriented mechanism. Capital self-maintenance mechanism forced SOEs to accurately reflect market value of assets in order to maintain state capital in condition of high inflation.

(3) Since 1991, the State has officially assigned the right of managing and using capital, clearly clarified responsibility of capital self-maintenance to SOEs. According to this mechanism, the State (financial offices and relevant authorities) entrusted to Director and Chief accountant of SOEs with capital from or originated from state budget and self-generating capital. Enterprises were entitled to use the assigned fund for their operation purpose and in conformity with current regulations. They were responsible for maintaining total value of the assigned fund. The State examined capital condition of enterprises annually

and had encouragement methods for those that gained good capital maintaining result such as allowing them to account the surplus to self-generating capital and not have to pay capital-use fee for the amount exceeding a specific rate. Enterprises which failed to fulfil this regulation must compensate the loss by their own budget. This mechanism has given SOEs more autonomy in doing business as well as financial arrangement. The State gradually reduced its influence on SOEs' operation and simultaneously clarified the responsibility of SOEs for efficiently using and maintaining state-assigned capital.

- (4) Since 1990, mechanism on profit distribution has been step by step reformed. As enterprises of other forms, after-tax profit of SOEs has been used firstly to establish business development fund for the purpose of business expansion with the minimum rate of 35%. Benefit of labors has been much more improved with policy on establishing reward and benefit fund that have the maximum value equal to fund for one-year salary. This mechanism has brought about an opportunity for enterprises to accumulate fund for business expanding purpose and build up a close relation with their labors. However, this mechanism has not clearly confirmed the right of the State as the owner to after-tax profit. Besides, there was a gap in earning among labors working for different enterprises.
- (5) Law on State-Owned Enterprises was promulgated in 1995. It not only was the highest legislation on SOEs management but also expressed a comprehensive reform in enterprise management, especially with respect to SOEs, as follows:
- 1) With respect to manage capital and assets: continuing the direction of assigning the right of managing and using capital to enterprises. Moreover, the right of enterprises in this field was specified as follows:
 - (a) The right to use capital actively, to change capital and asset's structure to meet business requirements. To be entitled to pledge, to mortgage, to lease, to transfer and to settle assets (excepting in case of main production line, enterprises must get approval from relevant authority).
 - (b) The right to mobilize capital from various sources for business purpose. To be responsible for capital use efficiency and capital reimbursement. To actively invest the assigned fund in another entity in comply with laws and regulations and to be in charge of investment result.
 - (c) The right to solve assets' losses according to mechanism on capital self-maintenance; to establish provision for bad loans, provision for inventories devaluation and reserve fund for capital maintaining purpose.
 - (d) The right to depreciate fixed assets within duration schedule set out by the Government instead of a fixed and unchanged rate as implementing in previous. This regulation enabled enterprises to get invested capital back faster to renew and renovate their technology.
 - 2) With respect to turnover and expenditure control: enterprises were allowed to use turnover to compensate expenditure. In comply with market mechanism and international practice, enterprises

could gather and consider expenses in advertisement, marketing, commission... provision for bad debts, depreciation of inventories and invested securities as expenditure. Besides, enterprises were permitted to use reserved fund established from after-tax profit to compensate losses occurred to assets and from other reasons. It was director or manager of enterprise who had the right to determine all expenses and took responsibility for their decisions. The State only managed and supervised operation of enterprises by setting out principals on expense calculation and by other norms set by enterprises.

- 3) Distribution of after-tax profit was reorganized to encourage enterprises to accumulate capital for business expansion by increasing minimum rate of after-tax profit putting in development fund to 50%. Benefit of labors was adjusted to relief an unequal situation in earning among enterprises when perfected competitive environment and monopoly prevention mechanism haven't established yet.

Mechanism and policies on enterprises' investment

- (6) Since the beginning of the 1990s, the State has restricted state budget investment in enterprises. State budget has shifted to focus on some sectors related to infrastructure such as electricity industry... Regarding enterprises that could collect invested capital back themselves, the total amount of invested capital, even new investments, would be financed by banking credit. The State put aside an adequate proportion of state budget for favorable credit with lower interest rate. This kind of credit was used for financing special sectors stipulated by the Government. Both SOEs and enterprises of other business forms can access this source. Apart from the above policies, annually, the State also spent an adequate amount of its budget in supplementing current capital of SOEs. However, this amount has been reduced yearly and was directed in newly established enterprises and export-oriented production companies that really lacked of capital.
- (7) Before 1995, although of policy on assigning capital to enterprises implemented from 1990, the State started to gradually collect its invested capital by policy on fixed asset depreciation. Annually, basing on depreciation rates, SOEs were forced to hand in the depreciation amount of assets formed by state investment to state budget. Together with restricting investment from state budget, this policy made state's invested capital in enterprises smaller and smaller. This came in conflict with business expanding requirement and resulted in higher and higher proportion of borrowing capital in enterprises' capital structure. There were enterprises that had borrowing amount many time higher than owner equity. In 1995, the State eliminated policy on collecting depreciation to make state's invested capital in enterprises not only unchanged but also increased by supplementing with after-tax profit (excepting unprofitable enterprises). Besides a policy on collection of depreciation, the Government also applied a policy on collection of capital-use fee to all SOEs. According to this policy, annually, SOEs must hand a particular

amount of money basing on the amount of state's invested capital and its type of business. Before, this payable was considered enterprise's expenditure but since Law on SOEs was promulgated, this item has calculated on after-tax profit. This payable was small, especially compared to interest rate charged by commercial bank. However, it has affected SOEs ability to accumulate capital, especially for capital intensive sectors such as electricity industry.

Taxation policies

- (8) Since the Law on Business Sales Tax, Profit Tax and Special-Consumption Tax were promulgated, tax obligation of SOEs has been the same as that of other business forms. Before, SOEs implemented the regulation on national collection regime. This policy created inequality not only between SOEs and enterprises of other business forms but also among SOEs. According to principle of this policy, the amount payable was calculated basing on business expenditure multiplied by a constant rate, that's why enterprises with high expense level were required to pay more. This policy was completely inappropriate to market-oriented mechanism. Taxation policies have been adjusted and improved continuously to meet market requirement. In 1999, business sales tax & business profit tax were replaced by VAT & business income tax. This was a radical reform in taxation, well meeting the requirement of market mechanism and integration tendency. These new policies create a great challenge to SOEs.

Policies on arrangement, equitization and ownership diversification of SOEs

- (9) During the last decade, the State had actively implemented process of restructuring and reforming SOEs. The number of SOEs reduced to 5,400 from 12,300 in late 1989. In 1990, simultaneously with decision on assigning capital to SOEs, the State started to dissolve SOEs that operating inefficiently and losing capital. Decision on re-establishing and re-determining legal capital level of SOEs has resulted in eliminating small-scale and unprofitable enterprises. In 1995, the State decided to establish large state corporation including: corporation operating in specific field nation-wide (corporation 91) and corporation operating in particular area (corporation 90). Up to now, there have been 17 corporation 91 & 75 corporation 90 with more than 1,392 member companies. State corporations have accounted for 66% of the total value of State's invested capital in enterprises, 42% turnover & 80% profit of SOEs in general. On 7/1994, Law on Bankruptcy of Enterprise came into effect and SOEs were also subjected to this law. Thus, besides merge and dissolve, SOEs will be announced bankruptcy when they cannot pay their due debts. This regulation assured the equality among enterprises of all business forms in conformity with market mechanism.

(10) With respect to finance: regulations on financial settlement in the process of dissolve and bankruptcy have clarified limited responsibility of SOEs. SOEs only took responsible for debts within their assigned capital. The State didn't pay any debt instead of enterprises excepting debts guaranteed by the State. Law on SOEs issued in 1995 officially recognised this limited responsibility of SOEs.

(11) With the aim at enhancing the efficiency of enterprises which have been restructured and reordered, in 1992, the State implemented a pilot program on SOEs equitization. To 1996, equitization policy had been improved & expanded radically. When making out a general strategy on reforming SOEs, the Government asked all ministries, sectors & local agencies to classify & determine which enterprises will be equitized or diversified ownership with restructuring plans in detail. Because of having appropriate policies & active management of the Government from central to local level, the speed of equitisation process was faster and faster improved. Up to the middle of August 2000, there have been 460 SOEs that were fully or partial equitized.

Together with equitisation policy, in 1999, the Government adopted mechanism on transferring SOEs to labours, sale, management contract & lease SOEs. SOEs subjected to this policy were enterprises having owner equity lower than 1 billion VND, having bad business results and the State didn't want to hold shares any longer; enterprises having owner equity from 1-5 billions VND and getting losses. The policies on transformation of SOEs' ownership in term of transfer, sale, managing contract & lease have created a various forms of transformation and diversified ownership of SOEs.

(12) Financial policies on transformation of SOEs's ownership focuses on the following issues:

- 1) Method of enterprise valuation was based on market price which reasonably accepted by seller (the transferer) & purchaser (the transferee). Enterprise's advantages (intangible assets) must be fully evaluated. Besides, all assets which were broken down or not accepted by the transferee, bad debts also were eliminated from the value of enterprises.
- 2) Debts of enterprises must be fully considered and solve in reasonable way. Debts to the State, tax obligation & payable to state budget that enterprises cannot pay will be deducted. Debts to banks will be considered to renew the duration schedule for payment. Impossible receivables were not calculated to enterprise value.
- 3) Enterprises equitized, transferred ownership or sold were entitled to priorities offered by Law on Encouragement of Internal Investment. If they could not satisfy all requirements as stipulated, they will receive tax exemption or reduction for a certain period of time. Enterprises will be exempted from registration tax when re-register their assets, entitled to continuing priority in banking credit (if any) as applied to SOEs and had the right to continue renting land and other services for doing

business.

- 4) Labours working for enterprises were entitled to some financial priorities such as 30% price off when purchasing shares (the number of favourable share was calculated on their working duration, the value of state invested capital and the maximum level was 10 shares for a year). For enterprises which were entrusted to labours, labours were not required to pay for their shares if they still owned those shares. If they transferred their shares to another owner (after transferring prohibited period) they must hand in 30% initial value of shares. For enterprises which were sold, leased or transferred by management contract, labours in these enterprises will have more priorities compared to other.
- (13) The State established supporting fund for the process of SOEs' restructuring & equitization. This fund was used to support SOEs during transformation process such as: providing financial supports to help labours buy favourable shares, giving allowance to labours who voluntary agreed to break labour contract, retraining labours working for transferred, leased, sold or equitized enterprises. This fund will also be used to invest in ownership transformed enterprises to help them expanding their operation by increasing number of state holding shares. The State also used this fund to consolidate financial condition of enterprises having financial difficulties so that they can be equitized or transformed into other business forms. Sources of this fund were got from selling state's invested capital in equitized enterprises and dividends paid to shares hold by the State. Annually, the State extracted an adequate proportion of its budget to finance this fund. Besides, this fund has received contributions from many other voluntary sources both from domestic and abroad. Supporting fund for the process of reforming & equitising SOEs has been operated in a consistent system and organised at 3 levels: central level, local level and under state corporations. This system is controlled and managed by Ministry of Finance.

Some comments on financial relationship between the Government and SOEs in the last period

- (14) Financial relationship between the Government and SOEs in the last period has been continuously improved. The State step by step reduced investment in SOEs by its own budget but increased banking credit investment. The State, with the role of the owner simultaneously restricted number of obligations paid by enterprises. It also gradually gave more autonomy in financial management to SOEs, reduced its influence in SOEs' operation. This reformation was timely supporting the orientation to develop market mechanism & appropriate to international practices. These changes have helped operation of enterprises more and more flexible, business efficiency of SOEs increasing, boosting the competitiveness and creating a fair "play ground" for enterprises of all economic sectors.
- (15) Favorable financial policies applied to ownership-transformed and equitized enterprises have been

more and more expanded, clearly expressed firm determination of the Government on radical restructuring SOEs. Policies issued from pilot program have been continuously improved not only to prevent negative impacts on social-economic condition but also well and timely meet requirement of the transition period.

(16) However, financial policies for SOEs have had many inappropriate issues that need adjusted and amended as follows:

- 1) The policy on reducing state's invested capital and increasing banking finance was right but this direction should be much more specified. For enterprises that are newly established or in process of large expanding, the State as the owner should invest a reasonable proportion to ensure a minimum capital level for operation of such enterprises. It should prevent a situation in which SOEs to do business under condition of relying completely on loans or borrowing capital many times higher than owner equity. Inappropriate regulation on credit duration (both to commercial and favorable credit) has brought about bad effects. Many enterprises financed with borrowing capital had to suffer serious losses because they must conduct policy on fast depreciation to ensuring on time loan-repayment; interest payable accounts for big proportion in the total business expense. Duration of each loan should be determined on negotiation between bank and enterprise to meet the requirement of business cycle and repayment ability of enterprises.
- 2) Although policies on collection applied to SOEs have been improved, there still exist many unreasonable items such as collection of capital use fee. The taxation policy stipulated many special situations and had various tax rates (especially VAT) that created unequal business environment and limited the competitiveness and reform process of SOEs. In some extents, the rate of contribution applied to SOEs is too high, facing them with difficulties when they want to expand their operation.
- 3) Policies on capital management have featured with central planned economic mechanism such as regulations on mortgage, pledge, lease, transfer and liquidate enterprises' assets or the determination of outside investment not basing on the total investment value but on business form of invested entity (whereas it is SOE, private or foreign invested enterprise...). This mechanism not only brought about deep influence in enterprises' operation but also restricted the supervising ability of the Government.
- 4) Regulations on legal business expense of SOEs are not clear and appropriate. Duration for depreciating a particular asset must be in compliance with time schedule set by Ministry of Finance, otherwise, enterprises must get approval from MOF and face many difficulties. Regulation on determining value of salary fund, salary level paid to labors, restriction on expenses used for advertisement, commission, marketing... are inappropriate, discourage enterprises to reduce their expenditure.
- 5) Right of the owner to after tax profit was not specified. There are many funds that must be established after paying off tax obligation and this regulation makes capital accumulated by enterprises lower.

The establishment of reward and benefit fund was featured with subsidy mechanism.

- 6) Financial policies on ownership transformed enterprises still have many issues that were unreasonable and in conflict. The restriction on number of favorable shares sold to labors that was based on proportion of state's invested capital has affected the benefit of labors who work in enterprises with low state capital. Regulation on maximum number of share hold by individual or organization limited not only investing ability of investors but also SOEs reforming process. Mechanism on entrusting SOE to labors was too complicated and priority gave to laborers in this kind of transformation is less than that of other kinds. Priority applied to organization or individual who purchased enterprises was inappropriate.
- 7) Mechanism on organization and operation of supporting fund for SOEs restructuring and equitizing process was in conflict with the current financial mechanism, so that it created difficulties in implementing process. According to current regulations, when equitizing a part of SOE or a sub-company of state corporation, revenue received from selling state invested capital will remain under control of enterprise. Dividend paid to state shares will be considered turnover of equitized enterprises or state corporations. It is in conflict with regulation on supporting fund in which the above dividend is considered revenue of this fund. It is the same in case of revenue received from leasing or transferring by management contract. Policies on allowance and training support paid to labors working for transformed SOEs have been not clear. Method of asset valuation and distribution of favorable shares of equitized enterprises should be improved and completed in order to prevent losses suffered by the State and to attract investors' consideration.

2. Financial relationship between the Government and SOEs in the coming period

- (17) In long-term strategy (for the next 10 years), state ownership still plays an important role in the economy. However, the number of 100% state-owned enterprises is expected to reduce to 2,000 by the year 2000 and to 1,000 by the year 2010. The number of enterprises that have shares hold by the State will increase. By the year 2010, enterprises of all business forms will be regulated by only one law - Law on Enterprise, regardless they are SOEs or private or foreign invested enterprises. In spite of the existence of Law on SOEs, by the year 2005, a large number of SOEs will be directed to operate under Law on Enterprises (in the form of one member limited company). These changes will greatly affect the relationship between the Government and enterprises.
- (18) To the year 2010, investment from state budget to establish new enterprise will be restricted but investment in profitable enterprises will be continued. Capital getting from ODA provided by foreign Government or NGOs will be used to finance the process of recovery, improvement and renovation of

assets of enterprises. The amount of invested capital and investment objects will be determined in cooperation with the donors. In the coming year, the main source of invested capital is banking credit. Favorable credit will be directed to enterprises of all business forms and especially in key sectors stipulated by the Government. The State also expands priority for investment in renewing fixed assets and renovating technology via favorable credit. That is, profitable enterprises that operate with borrowing capital will be supported with the difference between commercial and favorable interest rate or overall interest payable, so that they can reduce their business expense and repay borrowing capital more easily. This kind of supporting is efficient, especially for investment from state budget or by favorable credit.

To the year 2006 (the deadline for fully integration of Viet Nam to AFTA), the demand for technology improvement and renovation will be more and more increasing. To ensure the competitiveness of Vietnamese enterprises in integration process, capital supporting will be one of the most important policies.

(19) With respect to capital mobilizing to state budget: in recent years, the rate of mobilization was about 19%, the highest rate was 23%. For a developing country like Viet Nam, this rate is a bit high and will have bad effect on collection sources in the future. This rate should be adjusted at 17-18% GDP to help enterprises to accumulate capital for business expansion and assets improvement. This issue is very important in the process of integration. Applying the same rate of mobilization to both SOEs and enterprises of other forms, eliminating inappropriate collecting items such as capital use fee or after tax profit to increase accumulated capital of enterprises, to direct SOEs gradually operating under regulation of Law on Enterprises.

(20) Directing SOEs to operate under regulation of Law on Enterprise (as one member limited company). For this form, the representative of State's invested capital are entitled for determining some issues such as: selecting investment projects, deciding to transfer assets those value more than 50% of the total book value of assets, using after - tax profit. Other decisions are made by director of enterprise. The State cannot withdraw its invested capital directly but can transfer its investment to another investor. The State also cannot withdraw profit if enterprise' debts haven't paid off yet. This regulation ensures repayment ability of enterprise. The process of selecting director for enterprise is conducted carefully. The number of SOEs that are directed to operate under Law on Enterprises will increase annually.

(21) At the beginning, there is a large number of SOEs operating under Law on State-Owned Enterprise. Financial management mechanism applied to these enterprises should be gradually changed to the direction of Law on Enterprises. The State only control the value, but the right to use assets is given to enterprise. Enterprises are entitled to mortgage, pledge, lease and liquidate their assets. However, there will be

restricted regulations on the total value of transferring assets, capital investment and capital mobilization. Capital invested outside enterprise must be approved by the representative of the owner if the investment value reaches a specific level stipulated by the State. The State only determines the lowest depreciation rate, not restrict the maximum level to enable enterprise to be more flexible in their operation.

Regarding business expense, it is needed to establish supervising mechanism on monopoly. Simultaneously expanding business autonomy on expense management. Enterprises are entitled to decide salary level paid to laborers basing on their business results. The State should not control the highest level of salary but have to set a reasonable rate of profit and salary; increasing rate of salary must be appropriate to increasing rate of profit (or productivity). Other expenses are decided by enterprises basing on their operation. They must fully and accurately calculate all expenses, especially assets' losses and bad debts.

A large proportion of after tax profit owned by the State will be used to increase operation capital of enterprises. Eliminating some kinds of fund such as reserve fund and fund on unemployment support. Enterprises can use appropriate part of after tax profit for reward and benefit fund. It remains needed to restrict the maximum level of this fund. The restricted level is determined depending on increasing rate of laborers' earning (including salary and reward) that must not be higher than the increasing rate of profit or productivity. Regarding enterprises that are no need to expanded anymore, the State will withdraw a part of or overall after tax profit.

(22) Mechanism on enterprise management should be radically reformed. At the beginning, the state will conduct an experiment of establishment of financial invested company as a representative of state invested capital in enterprises. In the first stage, this company, on behalf of the State, will control and manage state's capital in joint-stock companies (equitized enterprises, enterprises having state investment), joint-venture companies and SOEs that had transferred to operate under Law on Enterprises. Regarding joint-stock companies, financial invested company has the right as a shareholder: assigning person directly responsible for supervising state's capital, taking part in decision making process... Regarding joint-venture companies, this company plays a role as investor, has rights and liabilities as stipulated in current laws and regulations. Regarding SOEs that were transferred to the form of one member limited company and operated under Law on Enterprises, financial invested company is a representative of the State. In the second stage, overall capital invested in enterprise by the State (including in SOEs and other forms) will be represented by financial invested company. Other state offices only have management function to enterprises of all business forms, not have the role of owner's representative.

(23) In the coming years, the process of reforming and restructuring SOEs will be accelerated. The number of enterprises that will be merged, unified, dissolved and go to bankrupt is increasing. According to

current regulation, new enterprise established via merge and unify must continue rights and liabilities of the old ones. However, if enterprises merged or unified have losses which can create difficulties for the process of transformation, the State will have supporting policies to help them to solve their problems. All losses will be considered state's capital decrease; tax obligations will be exempted. In general, enterprises must pay off all their debts before dissolving. However, if value of debts is higher than enterprise's total value, enterprises will be exempted from tax payables to ensure repayment ability to other lenders. This support aims at preventing domino effect that can create difficulties to other enterprises.

- (24) In the coming years, the process of equitization and ownership diversification will be accelerated and expanded. The restriction on percentage of share hold by individual or entity should be eliminated to encourage investors to buy share and create a drastic change in enterprise' management. Share distribution should be conducted via stock exchange or bidding. Gradually expanding the participation of foreign investors in this process. Encouraging investors to purchase enterprise in operation (with its rights and obligations, including receivables and payables) by lower selling price and preferences as applied to SOEs. Expanding the scope of enterprises that will be sold, not only limiting within enterprises with owner equity lower than 1 billion VND or from 1-5 billions and getting loss but also large and profitable enterprises that State no need to held shares. Implementing the experiment of share holding by foreign investors.
- (25) Experimenting and expanding the establishment and operation of a company that trades debts and assets of enterprises to minimize losses suffered by the State in the reforming process, to help enterprises make their financial status better in order to put up equitization process. Together with financial invested company, this company will become an effective tool to minimise direct influence of the State in the process of SOEs' transformation.
- (26) Perfecting structure and operation of supporting fund for the process of reforming and equitizing SOEs. This fund should be organized in consistent system and managed by central level. Funds established in local levels or under state corporations 90, 91 will be eliminated to ensure the effective use of this fund. The main purpose of this fund is providing support to redundant labors resulting in transformation process, including giving allowance and retraining to labors who voluntary break labor contract. Allowance to these labors must be increased. Retraining activities should be organized in area in order to improve efficiency and minimize expense. Financial supporting to SOEs in transformation process should be carried out by financial invested company. This company also is responsible for purchasing shares of equitized or other enterprises.

(27) The process of radical and intensive reform should be divided to 2 stages: 2001-2005 and 2006-2010.

In the period 2001-2005: amending Law on SOEs and policies on equitization, assignment, transfer, lease and by management contract; improving structure and operation of supporting fund for the process of SOEs' transformation; conducting the experiment of establishment of financial invested company and debt trading company.

In the period 2006-2010: promulgating Law on Corporation as the highest legislation and only one regulation on enterprises instead of Law on Enterprises, Law on SOEs, Law on Foreign Investment in Viet Nam; continuously perfecting policies on equitization and ownership diversification, allowing foreign investors to buy shares with unlimited amount and encouraging them to purchase enterprise in operation; perfecting policies on financial supporting for transformation process and expanding the operation of financial invested company and debt trading company.

State-Owned Enterprise Restructuring Costs and Policy Recommendations

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Corporate sector in general and state-owned enterprises (SOEs) in particular are the key elements of the economy, producing physical assets and wealth for the society. Financial health of the economy is strongly affected by the financial status of the corporate sector. Efficiency and productiveness of the corporate sector has played a determinant role in the process of economic development of the country and in the process of international economic integration.

State-owned enterprises has been played a key role in the production of the economy determining the balance between demand and supply in many important industries such as electricity generation, coal mining, steel, airway, railway, telecommunication. SOEs are also the pioneers in cooperating with other internal and external economic sectors, engaging in many economic joint-venture activities. This has contributed to diversify and to enhance the economic development of the country.

There were about 5,500 SOEs operating in Viet Nam at 1st January 2000. Of which 732 was public service provided enterprises. In 5500 SOEs, the numbers of SOEs established by ministries and ministries—equivalent agencies are 1,802, and Provincial People Committees established the remaining 3698 SOE. Although, in comparison with 1990, total number has reduced by 50% and has spread in various sectors of the economy, the number of SOEs operating in the service sector, especially financial services (accounting, auditing, insurance) has accounted for a very small fraction, and has been unable to meet with the requirements the economy and of enterprises themselves. The size of individual SOE is very small. Currently, there are 1,100 SOEs which have statutory capital of less than 1 billion VND. Production efficiency of the SOEs is very low and characterised by large proportion of SOEs generating - loss.

Although the process of state corporations restructuring has undertaken, the number of state corporations has remained large. Many state corporations were established only on the basis of mechanical consolidation of subsidiary enterprises, not for the reasons of economic linkages. The operation of the state corporations has not yet diversified. State corporations engaged in the same business is very common. For example, in the area of civil engineering, there are 25 state corporations currently operating.

In the past few years, production efficiency of the SOEs have tended to decrease, return ratio fell from 11% in 1996 to 9.2% in 1998 and further decreased to around 9% in 1999.

There are several important factors contributing to this poor performance of the SOEs:

- Backward equipment and infrastructure;

- Limited state capital invested in SOEs;
- The size of the workforce is very large due to the legacy of the old system, but lack of skilled and educated workers. Management team of the SOEs is not strong, and inflexible, therefore is unable to meet with the requirements of a market economy;
- The current regulations regarding the responsibilities and benefits of the enterprise managers has been incompatible with the enterprise management right assigned to the manager by the State. (When the enterprise making profits, benefits that the managers entitled are not allocated in accordance with the level of profit generating. On the other hands, when the enterprise making losses, the manager is not liable for this poor performance of the enterprise). Although the manager is the boss of the enterprise, but in reality the manager is not a "true boss" because the enterprise belong to the ownership of the State and the Vietnamese people, the manager does not have the ownership right at its full meanin.

In order to curb this situation, and together with the process of economic reform, the State has embarked in a direction to comprehensively restructure the system of state-owned enterprise. The purpose of this reform is to consolidate entire SOEs; enhance productivity, efficiency and competitiveness of the SOEs; mobilize capital in the society; create employment and income for the labor. This has also helps to reduce the level of state's intervention in the operation of the SOEs. Inefficient enterprises and enterprises incurred periodic losses will be settled in order to strengthen the financial status of the SOEs, and reduce the burden for the state budget.

Therefore, the SOE sector need to be restructured through process of merge, equitization, transfer, selling, business contracting, leasing, or liquidation. Within these modes of restructuring, transfer of SOEs to the labor collectives is a form of ownership transformation, which is at no cost, sale and equitization are also forms of ownership transformation, but in return the State shall receive proceeds from investors. Business contracting, and leasing of SOE refers to the change in the management mode of the SOEs in the ways to enhance efficiency.

By the end of July 2000, the cumulative total equitized SOEs reached 455. The details are as follows:

- In the period, 5 SOEs were equitized, 2 SOEs were sold
- In the period 1996-1997, the total of equitized SOEs stood at just 14.
- In the period 1998-1999, the numbers of SOEs being equitized were 350. In 1999, the State equitized 250 SOEs, accounted for 65% the total, or more than 7 time the number of SOEs being equitized from 1992 to 1998.

The cumulative total equitized enterprises comprised of about 2/3 locally-controlled enterprises, and the remaining 1/3 are centrally-controlled enterprises or enterprises that are members of State Corporations 91.

The numbers of SOEs that have equitized and restructured by sector are as follows:

- | | |
|---------------------|-----------------|
| • Transportation: | 47 enterprises |
| • Trade services | 176 enterprises |
| • Civil engineering | 209 enterprises |

- Aquatic, Agricultural products processing 23 enterprises

1. Policy and regulation on state-owned enterprise restructuring

The achievement of the above-mentioned results has been due to the implementation a comprehensive set of policies by the Government. These policies have covered wide range of issues, including the issuance and the implementation of the regulations. The government has also put many efforts to create a favorable environment for the enterprises after restructuring. There have been strong commitments from various government authorities in restructuring SOEs, from the central to the local government. The Government has also paid attention to advertise for benefits of SOEs restructuring to the employees. In particular, legal framework for the process of SOE's restructuring has been on the way of improving, especially policies to encourage investment in the restructured SOEs (preferential treatments for the employees and the investors). SOE's restructuring regulations can be summarized as follows:

(1) *Merging SOEs*

In principle, merged enterprises shall inherit all rights and obligations of the individual enterprise before merging. Of which are the rights and obligations regarding receivable debts, payable debts and other financial outcomes related to the performance of individual SOE before merging.

However, in the case that the financial position of individual enterprise before merging is weak affecting financial situation of the merged enterprises, the State may provide some forms of supports, such as writing off state budget debts, or restructuring the amount of debts outstanding.

(2) *The process of SOEs equitization*

In order to accelerate the process of equitization of SOEs, the Government issued the Degree 44/1999/ND - CP dated 29/06/1999 on the transformation of SOEs into joint-stock company, replacing the Degree 28- CP of May 7, 1996 of the Government. The List of SOEs needs to be equitized is selected based on the classification of SOEs in accordance with the Directive No 20/1998/CT-TTg dated 21/04/1998 by the Prime Minister. These are the enterprises in which the State does not need to retain 100% equity capital.

Depending on specific requirements, SOEs shall be equitized by one of the following forms: Retain the existing value of the state's capital at the enterprise and equitization through issuing shares; selling part of state's capital value in the enterprise; or selling all state's capital in the enterprise.

The sale of SOE's shares is made available to all investors, including the employees of equitized enterprises, other Vietnamese citizens or foreign investors.

Preferential treatments for equitized SOEs

In the process of equitization, investors shall not bear any expenses relating to organization and implementation of the equitization's procedures. The State is responsible to cover all of these expenses, comprising of:

- Printing of materials; conducting technical training on equitization procedures;
- Making inventory, and evaluation of enterprise assets;
- Elaboration of equitization plan; Article of Association and Memorandum of joint-stock company;
- Hiring of audit to reassess the performance and value of assets of the enterprise;
- Conducting a meeting of enterprise's managers and employees to implement equitization;
- Propaganda and advertisement for the equitization of the enterprise;
- Organization of the sale of shares;
- Conducting first shareholders meeting;
- Other expenses related to equitization of the enterprise.

All of the above mentioned equitization expenses are limited in the range of 1% to 3% of the actual value of equitized enterprise. The actual limit dependd on the size of the equitized enterprise: if the equitized enterprise has the actual value of less than 3 billion VND, the enterprise is entitled to spend not more than 3% of this value; if the equitized enterprise have the actual value from 3 to 10 billion VND, the enterprise is entitled to spend an extra 2% of the added enterprise actual value; if an equitized enterprise has the actual value of more than 10 billion VND, the enterprise is entitled to have an extra 1% of the added enterprise actual value.

Assets which the shareholders do not have requirements to use, or asset that are imposible to use, or debts that are unable to recover shall be not included to determine the actual value of the State at the enterprise.

Preferential treatments for employees

Prior to 1998, employees of equitized SOEs are entitled to a preferential treatment by which the State allocated to the employee a portion of state shares. The allocation of state shares is based on working time of the employees in the equitized enterprise. However, the State still remained the owner of the allocated shares, the employees only benefit from dividends of the allocated shares. The employees are also entitled to purchase shares on credit on the basis of 5 years term with annual interest rate of 4%. This provision had not encouraged the employees to put more capital into the enterprises and had also restricted the right of employees to transfer the shares.

In order to overcome this problem, and to encourage participation of the employees in the equitization process, as well as to create a necessary condition for the development of the stock exchange, the government through the enactment of the Decree No 44/1998/ND-CP has adjusted preferential policies for the employees

in equitized enterprises. According to this decree, the employees of equitized SOEs will be entitled to buy share with 30% price reduction. The number of share sold to the employees on this preferential price depends on each person working seniority in the SOE, for each year working in the SOE, the employee is entitled to buy 10 shares on discounted price. In particular, poor employees in the equitized enterprise will also be entitled to defer the payment for the purchase of the preferential shares in 10 years, including a grace period of 3 years. The employees who bought shares on preferential price shall gain ownership of the shares and have the right to transfer these shares.

In addition, employees of the equitized SOEs will also benefit from the distribution of residue balance of bonuses fund and welfare fund of the enterprise at the point of equitization.

Employees in the equitized enterprises will also have the right to be retrained for the new job; benefit from severance payments. In the case of 12 months after the transformation of a SOE in to a joint-stock company, if the employees lose their job due to re-organization of the enterprise business and operation or due to the renewal of new technology, the employees will be entitled to the severance payments. Details are as the followings:

- The State shall subsidize employees for cost of training for new jobs. Job training subsidies will range from 1.37 to 8 million for each employee, depending on the level of training (university or college), and for job retraining, the subsidy will be 3 million for one employee.
- If the employees who have worked in the enterprise for more than 1 years losses their job, the enterprises have the responsibility to retrain them for the new jobs. If the employees are unable to get new job, and have to terminate their labor contracts, the enterprises have to make severance payments for the employees at the rate of one month salary for one year working at the enterprises and this payment must be at least 2 months salary of the employees.

Financial resources to support for employees of the equitized SOEs are from the proceeds from the sale of state shares (according to the Decision 177/1999/QĐ-TTg of August 30, 1999 on Organization and Operation of the Assistant Fund for state enterprise restructuring and equitization).

(3) Transfer, selling, business contracting and lease of state-owned enterprises.

Transfer, selling, business contracting and leasing SOEs are applicable to small-scale SOEs which have the accounting book value the state capital of less than 1 billion VND, and have incurred chronic losses, or the SOEs which book value of which have accounting book value the state capital between 1 to 5 billion VND and have suffered from chronic losses, but not yet fallen into the state of bankruptcy (excluding agricultural farms; forestry farms owned by the State, SOEs operating in consultant businesses)

Transfer of a SOE is the transformation of the ownership of the enterprise from the State to a labor collective in the enterprise. The labor collective has the right to use and to manage assets of the transferred enterprise for profit-earning purpose.

Entire assets of the transferred enterprise shall belong to the labor collective, which inherits interests of the enterprise, and is responsible to take over all obligation of the SOE, including debt payable. The employees in the enterprise are entitled to own part of the enterprise value in shares at no cost. This means the State shall not recover the amount of capital invested in the enterprise prior the transfer of the enterprise.

The enterprises transferred to the labor collective if incurring losses or facing with financial difficulty shall be entitled to support policy, such as writing off state budget debt, or subtracting bad debts out of the value of the enterprise, or writing off debts owned to Social Security Fund. If the transferred enterprises are in the position of insolvency, these enterprises will be supported by the Assistant Fund for state enterprise restructuring and reequitization.

The sale of a state-owned enterprise refers to the change of ownership from the State to investors. The investors have the right to manage the enterprise for profit-earning purposes. Depending on specific requirements, the purchaser shall or shall not inherit the debt obligations of the enterprise. If the purchaser inherit all debt obligations, the State shall transfer the actual value of the portion of the State capital in the enterprise; if the buyer does not inherit the enterprise debt obligations, the State will transfer its existing assets to the buyer, depending on requirements of the buyer.

Regardless kinds of purchase, and depending on the usage of existing enterprise labor and timing of the payment, the buyer shall be entitled to purchase the enterprise on discount price. If the buyer is the enterprise's labor collective, the maximum discount rate is 90% (if the buyer committed to use more than 50% of the existing enterprise's employee, the applicable discount rate is 50%, and if the buyer made a lump-sum payment, the discount rate is 20%). If the buyer is an outside investor, the maximum applicable discount rate is 70%.

Contracting a state enterprise and leasing a state enterprise refer to the change of the mode of management of the enterprise in order to utilize the enterprise current assets and resources in an efficient manner, and to increase the accountability of the enterprise manager, and the operational efficiency of the enterprise.

The State shall transform entire enterprise to the contracting party and the contracting party shall be empowered to manage and operate the enterprise for the purpose of profit-earning, ensuring the job and stable income for the employees. The contracting has the right to enjoy the profit that is above the contracted level and if the level of profit generating is below the contracted level, the contracting party is liable to pay for the deficit.

Depending on the requirements of the lessee, the State shall lease entire fixed assets that have formed the business of the enterprise, and the lessee is required to use all existing employees of the enterprise. The lessee shall (or shall not) inherit the debt obligations of the enterprise. The lessee has to pay annual leasing price to the State. The leasing price is determined based on the actual value of leased enterprise. The lessee has the power to reorganize the enterprise operation and management structure.

The expense for the implementation of transfer, sale, business contracting, leasing of the SOEs is funded

by the State, which is similar with the case of equitization. The expense is covered by the following sources:

- In the case of SOE's transfer, expenses shall be deducted from the value of the assigned enterprise
- In the case of SOE's sale, expense shall be deducted from the proceeds of the sale
- In the case of lease or business contracting, expenses shall be accounted into the expenses of the regular business's operation.

Assets that the enterprise's buyer or lessee does not have the need to use or the assets that can not be used shall be taken into account in the determining the value of the State's capital in the enterprise.

The State shall use the Assistant Fund for the restructuring and equitization of the SOE to support for enterprises that have to restructure (transfer, sale, business contracting, and leasing), to make necessary payment for the employees such as the costs of training and retraining, job-loss subsidy, which are similar to the the regime applied to the equitized enterprises.

Currently, policy for the restructuring of the debts of business contracting enterprises has not been in place, however, in practice, these enterprises may suffer from losses, which arise from poor quality assets or from the uncoverable debts. If there is no support from the State, such as debt repayment deferring, state budget debt restructuring or writing off, these enterprises will be unable to stay in business. Therefore, in order to maintain these enterprises, the State has to have a number of financial support polices, otherwise these enterprises will cease to operate.

(4) Enterprise closure up or liquidation

The enterprises that incurred periodic losses and being unable to recover its financial status after granting financial supports, but are still remained insolvency and are unable to pay its debt, then these enterprises will be closed up or liquidated.

2. Results and SOE's restructuring plan

Results

Through the process of closure, merge or re-registration of the SOEs (in accordance with the Decree 388/HDBT of the ministerial council on the establishment and re-registration of the SOEs, Directive No 500/TTg of the Prime Minister on the restructuring of the SOEs, and the Decree No 28/Cp on the transformation of the SOEs into joint-stock companies), the number of the SOEs have reduced by more than 50%, from 12,000 enterprises in 1990 to 5,500 enterprises in 1999. During this process, the State have to deal with more than 70 thousand of redundant labor, with total expenditure of more than 300 billion (of this the State paid 55% and the remaining 45% is paid by the enterprises by using enterprise's fund or adding to the enterprise regular expenses). The process of SOEs restructuring in this period has contributed

to change the scope, workforce of the SOEs. The operational structure of the SOEs is also restructured. 250 large corporations were amalgamated into two group of State corporations, called State Corporation 90/TTg and State Corporation 91/TTg.

- *Equitization of state-owned enterprises*: Regard to the number of SOEs that have gone through the process of equitization, the State has made the following supportive expenditure as follows:

With the current policy regarding the equitization expenses, assuming that the average value of all equitized enterprises is 6 billion VND and the equitization's expenses for each enterprise is 200 million VND, total equitization expenses incurred by the State will be around 90 to 100 billion VND. These expenses will be deducted from the proceeds from the sale of the portion of the state capital in the enterprise.

With regard to the value of assets excluded from the value of the enterprise when determine the actual value of the state capital, this amount is expected to be around at 200 billion VND, or 3 - 4% of the value of the equitized enterprises.

Preferential treatments for the employees: The total value of the reduction of the shares purchased on discounting basis by the employees is expected to be around 300 billion VND (for 450 equitized enterprises). This value is not included the value that the employees received from the distribution of the residual value of the bonus fund and welfare fund at the time of equitization.

Most of the equitized enterprises have operated efficiently in the past few years, and employment and income for the employees are very stable. Therefore, the number of employees lost their job or have to retrain for new skills is relatively small. As a result, the associated expenses have not yet incurred.

Total expenditure for the process of SOE's restructuring in the past few years have been around 500 - 600 billion (expense for the settlement of redundant labor in the period 1992 - 1995 are excluded).

The expenses for transfert, sale of SOEs in the past few years: In fact, the numbers of SOEs transferred, sold or leased until now have been relatively small. Currently, there has been about 20 SOEs that have gone through these forms of ownership transformation (having the decision to transfer, sell, or lease). Many of these SOEs have faced with debt restructuring difficulty due the fact that the value of the enterprises falling below the amount of debt owned. The state has to implement a number of measures to deal with these enterprises, such as writing off the state debts, subsidizing funds to pay for the social insurance premium of the employees, or to make severance payments for the employees. Total amount of funds supported to these enterprises by the State has reached many billion.

Future trend of the restructuring of SOEs

Financial status, existing labor utilization of the SOEs belonging to the category of restructuring (based on criteria set out in the Decree 103/1999/NDD-CP): Many SOEs belonging to the category of restructuring are unable to equitize due to poor financial status, high level of accumulated debt and large number of labor redundancy. The small-size enterprises operated inefficiently, incurred periodic losses were established

and managed mainly by the local government. In several regions, the number of SOEs suffered from losses are very large, for example the percentage of locally-established SOEs incurred losses is 46% in Nam Dinh Province, 35% in Thai Binh Province; 33% in Ha Nam Province; 21% in Hai Phong city and Ba Ria Vung Tau Province... Most of these SOEs have lost the amount of the state capital and therefore have created a large burden for the state budget.

Currently, the number of redundant workers in the SOE is accounted for around 6% of the total SOE's employees (based on the reports of SOEs). Provinces and cities having high level of redundant labor in the SOEs of more than 20% are Yen Bai (28.52%), Hai Duong (28.36%), Ha Tay (23.31%) and between 10% to 20% are Thanh Hoa (19.11%), Ninh Binh (18.45%), Lai Chau (17.39%), Ha Giang (15.95%), Cao Bang (15.05%), Tuyen Quang (14.51%)... The regions having the rates of redundant labor of less than 10% are North-East (7.28%), North West (7.46%), Southern Region of the Central (2.33%), Central Highland (5.76%), South-East (2.41%), Mekong River Delta (0.82%). Therefore, during the process of ownership diversification of the SOEs, there has remained many issues that need to be dealt with, such as bad debts, redundant labor, but financial strength of the SOEs is very constrained, and is unable to cover for these issues.

In order to speed up the process of SOEs' privatization, diversification in line with the reform direction, the State has to accompany with the enterprises to deal with the emerged issues. In particular, the State needs to have sufficient financial resources to support the process of SOEs debt restructuring and support for the redundant labor.

Assuming during the period 2000-2005, the State will restructure 2,600 SOEs. Of which 2,000 SOEs (accounted for 77%) will be privatized, transferred, sold and leased (1,300 SOEs will be privatized; 300 SOEs will be sold or transferred, and the remaining 200 will be leased); 500 SOEs will be merged, and the remaining will be liquidated. With this SOEs' restructuring plan, the State will incur following expenses:

- *The expenses for the organization of privatization, transfer, sale and business contraction of 2,000 SOEs:*

If these expenses are calculated based on the average amount spending by the SOEs on privatization in the past few years, total privatization expenses for 2000 SOEs will be around 240 billion VND (assumed that the actual value of the enterprise is 6 billion VND x 2000 SOEs x 2%).

If the State sell 200 SOEs, and the average book value of these enterprise is 3 billion VND, and the average state capital in these enterprise is 500 million VND, and if the sale of the enterprises is made at the maximum discounting rate of 90%, the State will lose about 460 billion VND (200 enterprises x 3 billion VND x 90% - 100 billion). If the actual value of the enterprises fall below their book values, the State will lose more than this amount.

If the State transfers 100 SOEs to the labor collective, and the average value of the enterprise is 800 million VND, the employees in these enterprise will be supported more than 80 billion by the State (excluded the expenses of implementing SOEs assignment).

Total value of assets that are excluded from the enterprise value is around 200 - 300 billion VND.

The number of employees need to be retrained for new jobs is about 100 thousand (around 10% of the total labor in equitized, transfered, business contracting SOEs) and 15 thousand employees shall not be employed. In this 15 thousand redundant labor, number of employees lost their job in the liquidated SOEs is accounted for 50%, and the remaining 50% is the employees that can not be allocated for job in SOEs that have assigned, sold or leased. Assuming that average working time of these redundant employees is 15 years and if each employee is entitled to receive subsidy of one month salary for every one year working in accordance with the current regulation regarding severance payments, the State has to support each redundant worker of around 15 million VND. With the number of 15 thousand redundant labors, the State has to spend 2,250 billion VND. In addition, there is an another expenditure of 500 billion VND for the cost retraining 100 thousand SOEs employees. These figures does not include other assistance of the State that are higher than the level stipulated in the current regulation to encourage the redundant labor to voluntarily terminate their labor contract, and also does not include the money paid to the Social Security Fund for the employees of the restructuring SOEs.

It is expected that the State needs to have a financial resources of 3000 - 4000 billion VND to support SOE's restructuring. These resources will be used to covered the costs of debt restructuring in line with the process of equitization, transfer, sale, business contracting, and lease of the SOEs, to pay for severance payments for the redundant SOE's employees. These expenses does not comprise of severance payments for the redundant labor in SOEs that are not on the list of restructuring in the period 2000 - 2005. To cover for these expenses, the State needs to have another 1,200 - 1,500 billion VND.

The Assistant Fund for SOEs restructure and equitization was established by the Decision No 177/1999/QĐ-TTg of August 30. The proceeds from the sale of the state capital in the SOEs subject to ownership change. Other capital sources for the Fund include the allocation from the state budget, aid from international organizations. The Assistant Fund is used for: subsidies to employees who voluntarily terminate the labor contract or lose their jobs; expenditures on the training and retraining so as to give new jobs to redundant labor, financial support to restructured and equitized SOEs; support to employees in the equitized SOEs in which the state-owned capital is not enough to cover preferential shares to be sold to the employees in the enterprises; addition of capital to SOEs which need to prioritized for consolidation, and investment. Therefore, capital sources of the Fund are very limited, and if there is no strong support from international organizations, the Fund will face with financing difficulty.

3. Emerged problems in the process of SOEs' Restructuring

The results of the process of the SOE restructuring mentioned above have been far below requirements and the expected timeframe for the equitization, transfer, sale, lease of SOE. There are several main reasons

contributing to this poor results:

- SOEs restructuring directions have not yet drawn strong attention and have not made clear within the enterprises. There has been very little support from manager and workers of the enterprises. Many SOEs incurred periodic losses, but have been very reluctant to be restructured. These enterprises have still wondered about the availability of the financial resources to make severance payments for redundant employees, and to pay for the due debts.
- Regarding to the policy for the SOE's employees, the total value of preferential value shares sold to the employees at the discount rate of 30% is limited in accordance with the value of the state's capital in the enterprise. Therefore, regard to the enterprises that have had the level of state's capital is small, but employed large very number of labor, the actual value of the preferential shares that the individual employee can be entitled to buy is relatively small. (According to the new regulation, these enterprises will be acquired the support from the Fund for the Assistant of the equitization and restructure of the SOEs).
- With regard to the sale of SOEs based on 90% discount of the selling price, the value of the preferential treatments that benefited to the employees in the selling SOEs will be much lower. This fact has created a tendency to delay the process of restructuring in the enterprise, the enterprise has tried to look for new policy from the government. In addition, the sale of the enterprise through this mode will create a strong burden for the State budget when dealing with the bad debts of the enterprises.
- Poor employees in the enterprise have been unable to find sufficient resources to buy shares in the enterprise, and therefore, they will be not eligible to participate in the management of the enterprises as the shareholders.
- The caps on shareholding of individuals and legal entities, especially on the shareholding of the enterprise managers have affected capital mobilization of equitized enterprise, and the exploitation of management talents of entrepreneurs.
- The severance payment for the employees who have voluntarily terminated their labor contract (1/2 month salary for ever one year working in the SOEs) is below the payment supported for the employees who have lost their jobs, and therefore does not encourage the voluntary termination of labor contract of the employees in the SOEs. In addition, the money that the employees could receive from the severance payments is not enough for them to spend during the course of finding new job.

Although, the regulation and policy for the settlement of debts of the SOEs subject to restructure have been in place, the implementation of these policies has been very slow. This has affected the financial status of the SOEs which has been in process of restructuring and equitising.

4. Future income from the reform of SOEs.

Equitization, transfer, sale and lease of SOE have been a comprehensive policy package to restructure the SOE, reflecting a strong commitment of the State in the process of reforming SOE. The process of SOE's restructuring during the past few years has been predominantly in the form of equitization, and mainly focussed on efficient SOEs. Currently, the total equitized SOEs is accounted for 10% of the total SOEs. In the future, the restructuring of the SOEs will bring the following benefits:

- Through the process of restructuring, the number of SOEs will be cut, and therefore reducing the work that belong to the responsibility of the State as a owner of the enterprises, such as making necessary investment for the SOEs, dealing with financial difficulty of the SOEs. This has also reduced the burden for the budget when the SOEs incurring losses. The process of SOEs' restructuring will help to strengthen the financial strength of the SOE sector, reducing the number of loss-making and inefficient SOEs.
- With the newly established form of enterprise after restructuring, the State will carry out the managerial role of a owner of the enterprise through the value of capital invested in the enterprise, and the State will be entitled to benefit from the distribution of profits.
- This process will help the restructured SOEs to attract idle capital of the corporate sector, of the society to invest in modern equipment, changing the mode of production. SOEs' restructuring will also contribute to strength the efficiency of assets utilization, increasing level of competitiveness of the Vietnamese SOEs in both domestic and international markets. These factors will create a condition to increase the level of budget collection.
- Through restructuring, the benefits of the enterprise managers are directly related with the performance of the enterprises. In the form of joint-stock companies, the managers will benefit from the distributed dividend on the number of shares owned, in the case of leasing, business contracting of SOE, the manager will be entitled for profits above the contracted or leasing price.
- The process of SOEs' restructuring will help to create jobs and income for employees working in the enterprise prior the equitization, attracting outside labor, contributing to maintain social stability. In the restructured enterprises, in addition to salary as stipulated by the current regulation, the employees will also benefit from distributed dividend of the share hold.

The above conclusion is illustrated by the following facts:

The figures from a number of enterprises have revealed that compared with prior to equitization, the performance of the equitized enterprise have made positive progress, revenue increased by more than 30%. Many equitized SOEs achieved the high rate of revenue growth, such as Refrigeration Electrical Engineering joint-stock company; Bach Tuyet Cotton joint-stock company; Sai Gon Rubber Joint-Stock Company (Kim Dan), Hai Phong Paper Joint-Stock Company... However, there are several equitized SOEs not achieving

growth in revenue.

The value of the state capital in the equitized enterprise has expanded. Equity capital of the equitized enterprise has also increased. For example, equity capital of the Transportation joint-stock company increased 15 times in comparison with the point of equitization. Thousand of billion VND from the society has been mobilized by these enterprises.

Many equitized enterprises have not only maintained their workforce, but also recruited many other new workers due to production expansion. According to the preliminary reports the equitized enterprises, the workforce of these enterprises have increased by 20%. For example, the number of employees working in the Refrigeration Electrical Engineering joint-stock company is doubled, from 334 employees prior equitization to 739 employees, and employees of Long An Export-Processing Joint-Stock Company increased from 300 prior equitization to 1,500.

The income level of the employees in the equitized SOEs has increased by 20%. A good example for this is the Transportation joint-stock company in which the average monthly salary of the employees is 4 million VND, increased by approximately 3 times in comparisons with pre-equitization. For the Ho Chi Min Honeys Joint-Stock Company, this figure is more than 2.5 times. Regarding to the transferred, selling, and leased SOEs, average income of the employees has also increased.

Profits of the restructured SOEs increased by 10%, and a number of equitized SOEs have achieved very high level profit growth, such as Bach Tuyet Cotton Joint-Stock Company. Can tho Foods and Vegetables Joint-Stock Company made a profit of 300 million VND in the period March 2000 to July 2000, which is equivalent to 1 year pre-equitization profit. Can Tho Foodstuff Processing Company, which is transferred to 30 employees in the company, has made a profit of 30 million VND since March of this year. The number of enterprises faced with the profit decreasing is relatively small, and there is no equitized enterprises incurred losses.

Distributed dividend of the equitized enterprises are higher than interest rates, on average dividend is around 1%/month

With regard to state budget contributions, although the equitized enterprises are exempted from corporate income tax for the first two years, these enterprise contributions to the State budget significantly increased during post equitization years as compared to those of the year prior to equitization. For example, contributions to the State budget of Refrigeration Electrical Engineering joint-stock company; Bach Tuyet Cotton Joint-Stock Company, My Chau Joint-Stock Company increased 3 times, and specially for Kim Dan Joint-Stock Company, the increase is 6 times. However, it is worth noting that in addition to the efforts of the enterprises, the increase in the contributions of these enterprises to the state budget may be due to the changes in regulations, such as the introduction of value added tax; corporate income tax, tariff reduction in line with the AFTA's commitments.

Regarding to the SOE that had transferred, sold or leased, many of them have increased efficiency of assets

utilization, capital mobilisation from investors, the enterprise's employees. The average income of employees in these enterprises have also increased. However, in addition to well-performing enterprise, there are a number of enterprises which the achievement is below expectation. Many enterprises have been still inefficient, and remained in loss-making positions. In particular, the merge of loss-making enterprise with a well-performing enterprise has created a burden for the later.

Equitized and transferred, sold and leased enterprises have had the right to change the ownership, management mode of the enterprises, and had the autonomy in production and operation. These enterprises are mainly small-scale enterprise, and very flexible, and it is easy for them to change technology, products to meet with the market's requirements. Therefore, it is expected that production efficiency of these enterprise will be enhanced further, and these enterprise will be able to compete with other enterprise.

In general, most of SOE after being restructured have strengthened their positions, continued to maintain operation and good income's employment for the labor. Many of these enterprise have mobilised more capital to expand operation, and therefore have created more jobs for the society.

In order to exploit the benefits of SOE restructuring, the State needs to have a comprehensive legal framework, ensuring the benefits for the employees.

Debt Concentration among SOEs and Their Leverage Ratios

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1. Problem

- (1) The average leverage ratios of companies listed in the stock exchange in the East Asia at the end of 1996 were 355% in Korea, 236% in Thailand, 188% in Indonesia, 129% in the Philippines, and 118% in Malaysia.¹ This observation is consistent with the view that the effects of external shocks on the financial system were deeper and faster in the economies with corporate sectors characterized by high leverage ratios (= debt/equity ratios).
- (2) Now the average leverage ratio of the SOE sector of Viet Nam was 128% at the end of 1997.² Does this indicate that the credit risks of SOEs of Viet Nam are not very large? This paper answers this question by examining the firm-level accounting data of 863 SOEs in Hanoi and HoChiMinh City at the end of 1997.³

2. Findings

Q1: Is the problem of “over-borrowing” common to all SOEs?

- (3) Figure 1 shows that debt is highly concentrated among a small number of firms. The debts of the most highly indebted 1.0 % (10.0% respectively) of the entire SOEs account for 45.4% (84.2% respectively) of the debts owed by the entire SOEs. Thus, if the “excessive borrowing” exists, it is limited to a small number of SOEs.

¹ S. Claessens, Djankov, S. and Lang, L. (1998): “East Asian Corporates: Growth, Financing and Risks over the Last Decade.” Discussion Paper, World Bank.

² Nguyen Duc Tang (1999, p. 42) in JVJR Follow-up Phase Report Volume II.

³ 531 are in Hanoi and 332 in Ho Chi Minh City. 410 are centrally managed and 453 locally managed. 56 are in Agriculture and forestry, 24 Fishery, 31 Mining, 386 Manufacturing, 34 Electricity and water production and distribution, 117 Construction, 38 Hotels and restaurants, 11 Finance and credit, 88 in Property business, 1 Education and training, 1 Culture and sports, and 1 Party and membership organizations. Survey was conducted at the end of 1999.

Q2: Is there correlation between the problem “over-employment” and the problem of “excess debts”?

- (4) Figure 2 shows that a positive correlation exists between the number of employees of a SOE and its debts. For the variables transformed by natural logarithm we get the following estimate:

$$\begin{aligned} \text{Ln (Debts)} &= 4.39 + 0.89\text{Ln (Number of employees)} & R^2 &= 0.40 \\ & (0.22) \quad (0.04) \end{aligned}$$

(The values in the parentheses are standard deviations.)

This result seems to be consistent with the claim that the problem of “over-employment” lies behind the problem of “excess debts” of SOEs. 1% increase in the number of employees is accompanied by 0.89% increase of debts.

- (5) However, Figure 3 shows that this inference is flawed. When we look at the group of the mostly highly indebted SOEs (that is, 10% of SOEs which occupies 84% of the entire SOE debts), no positive correlation exists between the level of debts and employment. Let us denote this group as HISOE. The regression estimate for the HISOE is:

$$\begin{aligned} \text{Ln (Debts)} &= 12.77 + 0.073\text{Ln (Number of employees)} & R^2 &= 0.019 \\ & (0.46) \quad (0.056) \end{aligned}$$

Thus for highly indebted firms the problem of “over-employment” is nothing to do with “excess debts.”

Q3. Are HISOEs equally vulnerable to the availability of credits?

- (6) Frequency distribution of HISOEs in Figure 4 shows that the leverage ratios of 41.8% of HISOE are less than 200%. If we use 300% as a reference point normally observed in high growth economies, then the leverage ratios of 38.4% of HISOEs exceed 300% and may be said to depend “excessively” on borrowings.

Table 1 Distribution of 86 most highly indebted SOEs in the leverage ratio

	Group I	Group II	Group III	Group IV
Debt/Equity (%)	$x < 100$	$100 \leq x < 200$	$200 \leq x < 300$	$300 \leq x$
Number	21	15	17	33
%	24.4	17.4	19.8	38.4

Group I firms seem to be quite robust to the shocks to the credit market.

Q4. What are the characteristics of the Group IV SOEs?

- (7) 29 of the Group IV SOEs are centrally managed and only 4 locally managed. 3 of them (including the SOE with the highest debt level) are in Agriculture and forestry, 3 in Mining related to oil and gas drilling, 11 in Manufacturing, 3 in Electricity and water production, 6 in Construction, 3 in Transport, storage and communications, and 3 (including the two with the highest leverage ratios) in Financial institutions.

3. Policy implications of findings

- (8) The findings in Section II imply:

- 1) Debt is highly concentrated among a small number of SOEs.
- 2) The level of indebtedness has no relationship with the level of employment among the highly indebted SOEs. Therefore, indebtedness is not caused by the attempt to carry excess labor.
- 3) The vulnerability to external shocks varies significantly among the highly indebted firms. Some highly indebted firms have adequate capital bases and financially stable, as measured by the leverage ratio.
- 4) A disproportionately larger number of highly indebted SOEs with high leverage ratios are centrally managed.

Figure 1 Debt concentration among SOEs

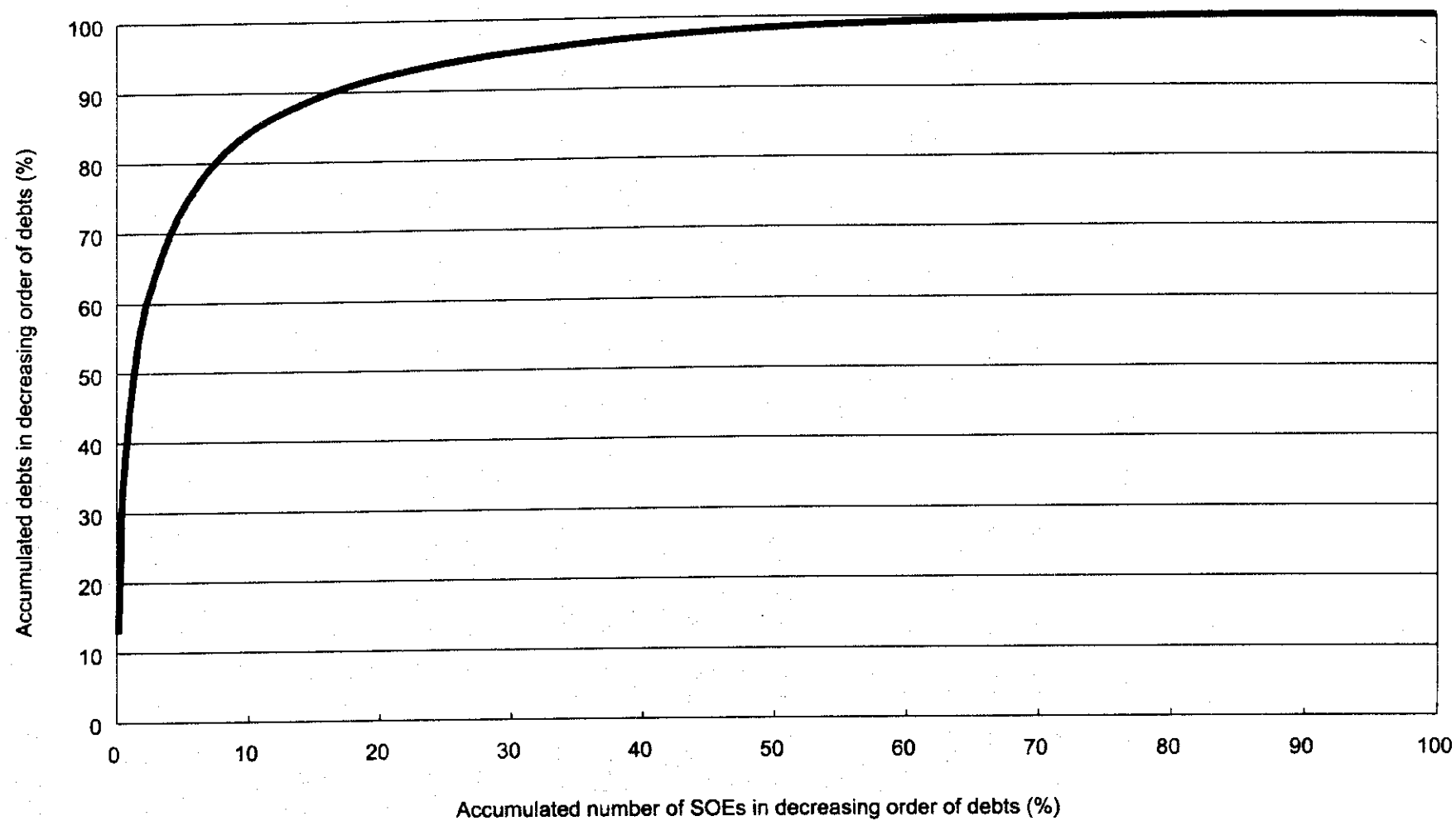


Figure 2 Covariation between employment and debts

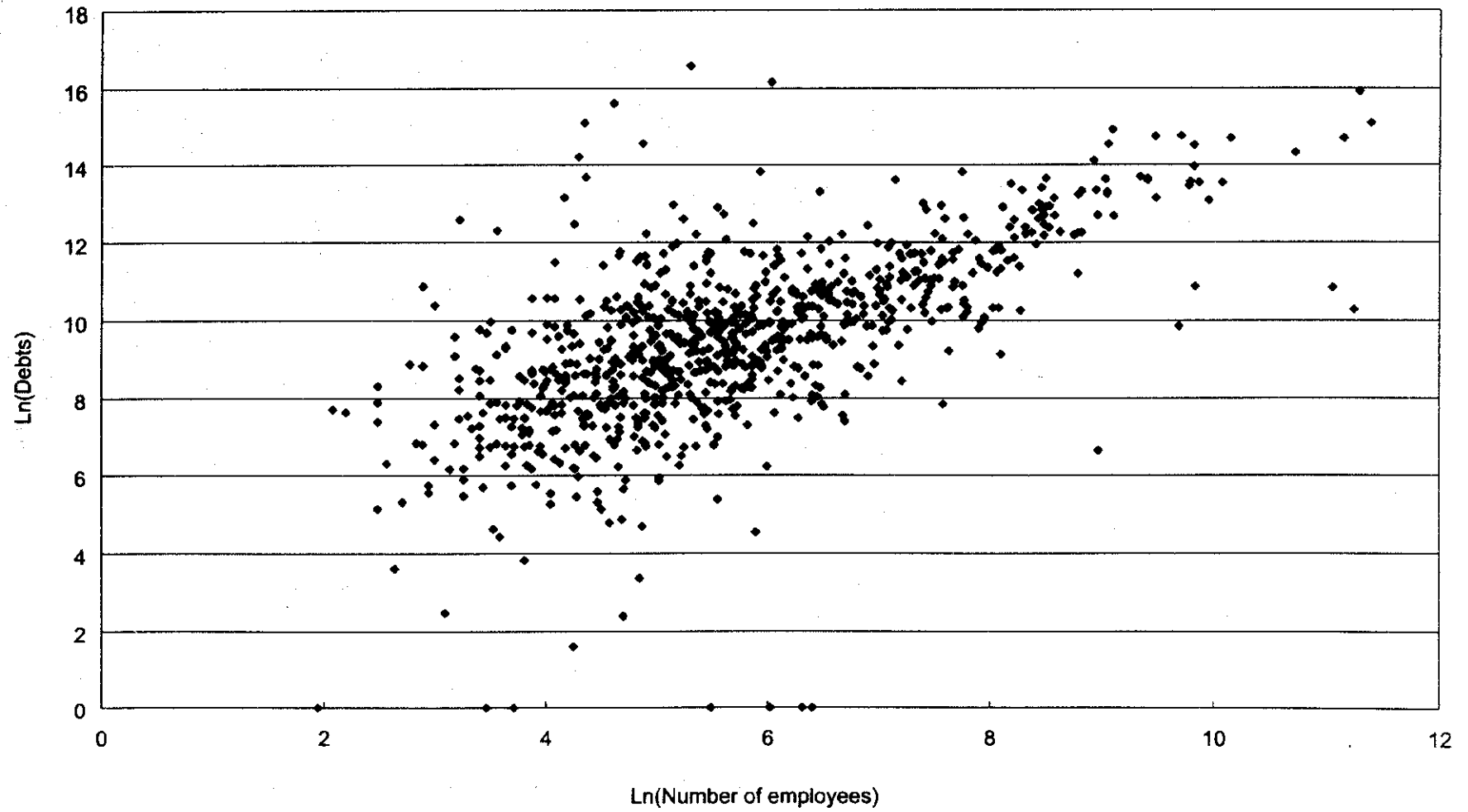


Figure 3 Covariation between employment and debts among highly indebted SOEs

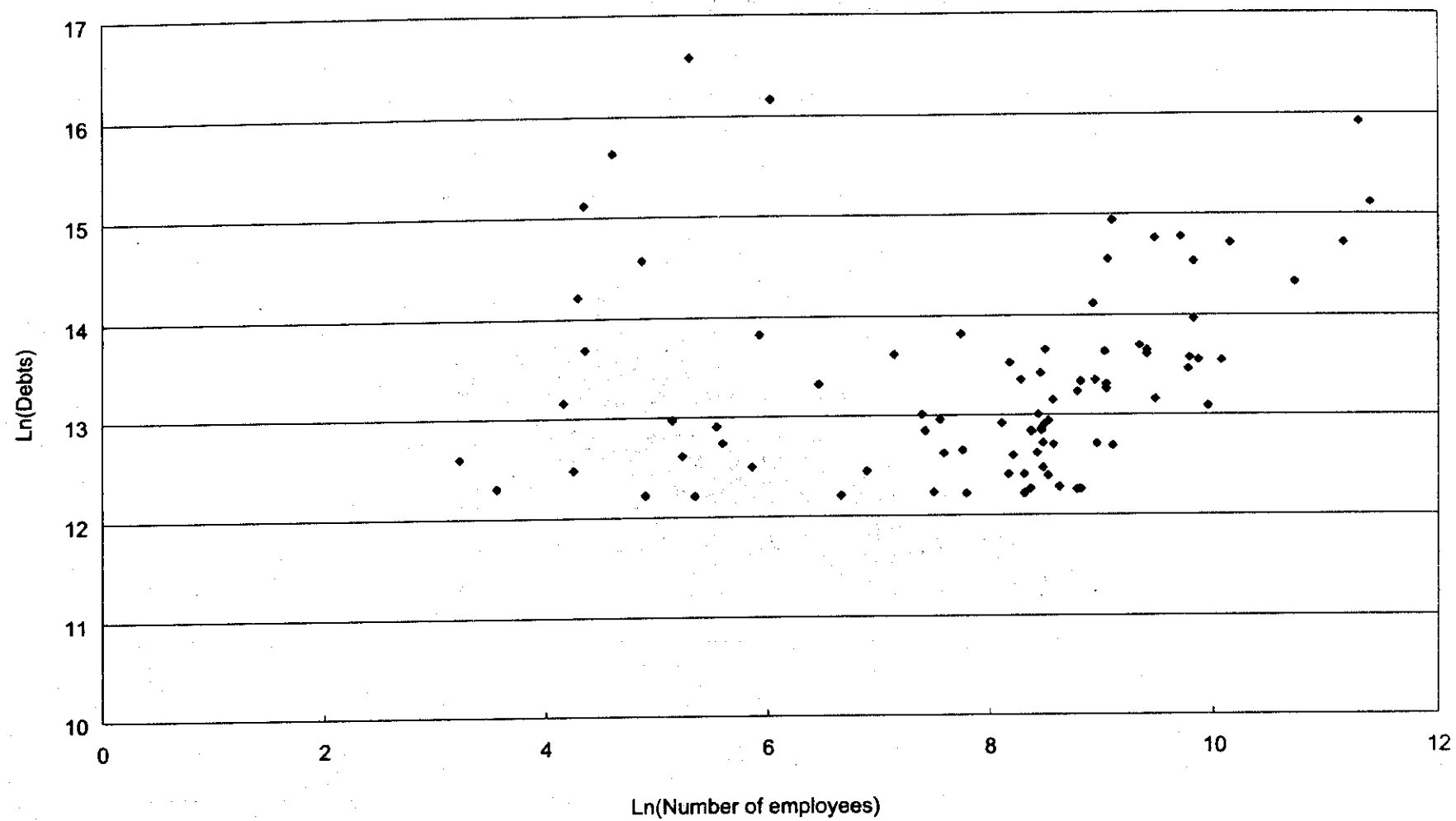
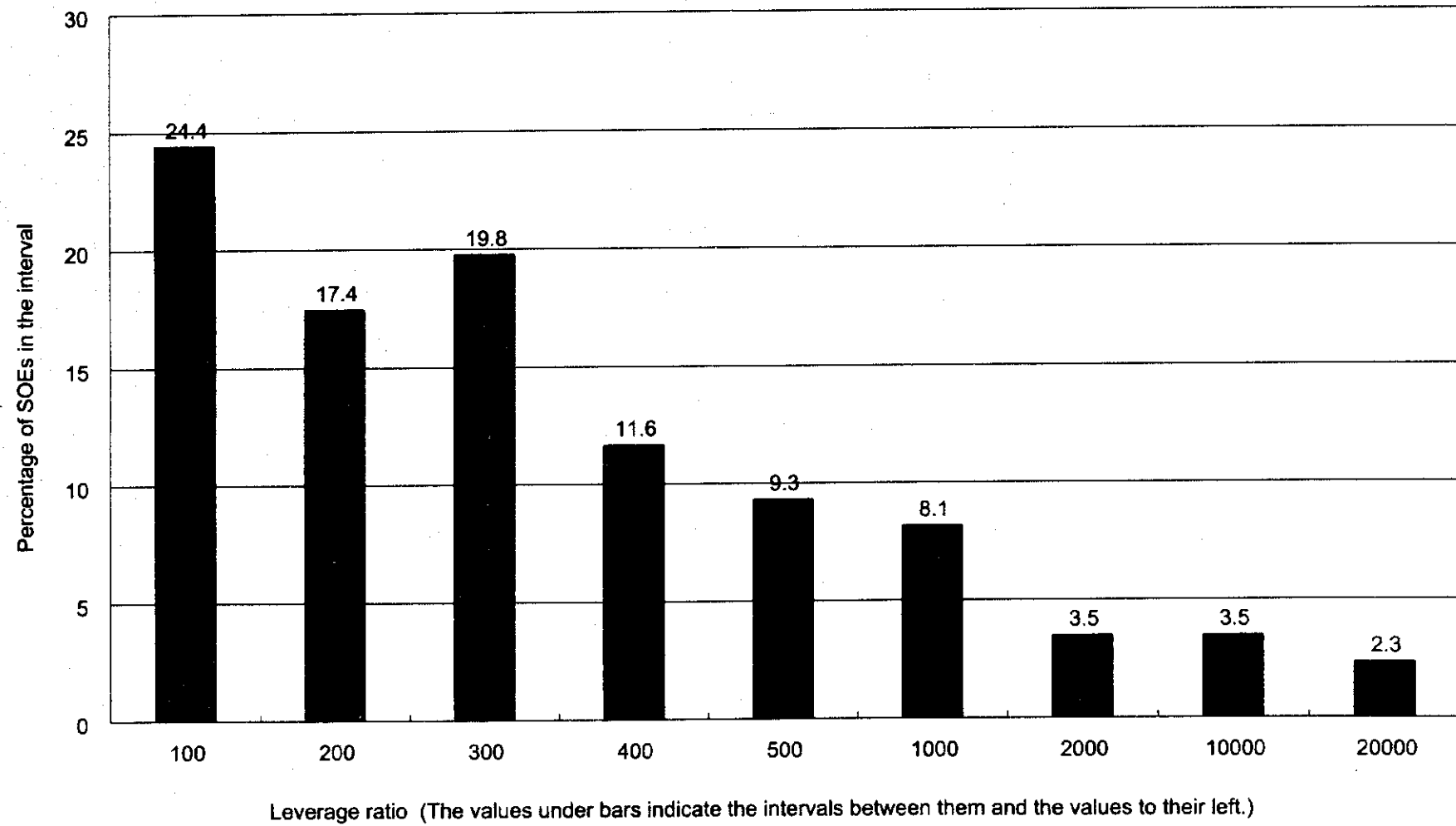


Figure 4 Frequency distribution (%)



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